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Issue - Sujet

Bill S-7 - Speeches

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RETURN TO - RETOURNER À

Name _____

Michael Assad

Room - Piece

4256

JUS-786 7201 0008

Canada



MEMORANDUM / NOTE DE SERVICE

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Telephone / Fax – Téléphone / Télécopieur
954-3232

TO / DEST.: Scott Nesbitt, Senior Counsel, Deputy Minister's Office

FROM / ORIG.: Michael Assad, Senior Analyst, Cabinet and Parliamentary Affairs Unit

SUBJECT / OBJET: Zero Tolerance for Barbaric Cultural Practices Act

Scott,

The *Zero Tolerance for Barbaric Cultural Practices Act* has just been introduced in the Senate today, November 5, 2014. The Bill will likely be numbered Bill S-7, however that will only be confirmed once it is posted online tomorrow. As you know, this is a Citizenship and Immigration lead, with a heavy Justice component.

We are advised that Second Reading may occur on Tuesday, November 18, 2014. In light of this, and in anticipation of a request from CIC to help with the preparation of speeches, you will find attached for your review and approval, three speeches that have been approved by Don Piragoff, SADM.

Your review and approval of the speeches are requested by **3:00pm Wednesday, November 12, 2014.** Once approved, please sign the front of the green folder.

Thank you!



Department of Justice
Canada

Ministère de la Justice
Canada

Fiche d'approbation Approval Slip

MLU 2014-015343

Objet / Subject: *Zero Tolerance Barbaric Cultural Practices Act - Speeches*

Préparée par /
Prepared by: Gillian Blackell and CIC
Personnel de soutien /
Administrative personnel: Chantal Low

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Due at MLU: _____

Soumise pour approbation à
Sector approvals as required

Initiales Initials	Année Year	Mois Month	Journée Day
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Elissa Lieff, Senior General Counsel, FCY

<i>C</i>	<i>2014</i>	<i>11</i>	<i>05</i>
<i>MLIS for E. Lieff</i>	<i>2014</i>	<i>11</i>	<i>04</i>

Donald K. Piragoff, Senior Assistant Deputy Minister, Policy
Sector

<i>[Signature]</i>	<i>14</i>	<i>11</i>	<i>05</i>
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William F. Pentney, Deputy Minister

_____	_____	_____	_____
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Équipe du SM / DM-Team

Approbation/signature/examen du ministre demandé pour le :
Minister's signature/approval/review requested by: _____

Remarques / remarks: *Carole Morency to approve in CLPS.*

À remplir par l'ULM / To be completed by MLU

À la demande de / Requested by: / Veuillez faire
parvenir à : / Please forward to:

Revue interne / Seen by: _____
Rédaction par / Edited by: _____

Reçue / received: _____

Received in MLU: _____

Carson, Derek

From: Assad, Michael
Sent: 2014-Dec-15 10:10 AM **s.19(1)**
To: [REDACTED] Lafleur, Eric
Cc: * CPAU Group
Subject: Bill S-7 (ZTBCP) - Speeches
Attachments: Speech 3 - EFM in Canada JUS_DMO approved.docx; Speech 1 - General overview JUS_DMO approved.docx; Speech 2 - Canada's leadership JUS_DMO approved.docx

Good morning,

You will find attached three speeches that have been prepared subsequent to an informal request from CIC. They have been approved by DMO.

Please let me know when these are approved for sharing with CIC.

Thank you,

Michael Assad
Senior Analyst / Analyste principal
Cabinet and Parliamentary Affairs Unit / Unité des affaires du Cabinet et parlementaires

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Justice - Speech #1

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

General overview

Length: words 1,878

Time: 15 minutes

DRAFT

**Speaking Notes
for the**

Honourable XXX

For XXX

***Bill S-7: Zero Tolerance for Barbaric Cultural Practices
Act***

Ottawa, ON

December 2014

Check against delivery

SECRET

General Overview of *Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act*

Mr. Speaker, I am pleased to have the opportunity today to speak on Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*. In the Speech from the Throne in October 2013, our Government promised that it would ensure that early and forced marriage and other harmful cultural practices, such as polygamous marriages and so-called “honour”-based violence, do not occur on Canadian soil.

Bill S-7 delivers on that promise. These harmful practices typically affect women and girls and violate basic human rights. They are unequivocally unacceptable in Canadian society. Our Government is taking action in strengthening the laws in Canada to prevent and respond to such practices.

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This Bill will do many things to address early and forced marriage and other related harmful cultural practices. It will establish in the *Civil Marriage Act* a national minimum age of 16 for marriage. This is to protect our most vulnerable in society – our children - from early marriages.

The minimum age of 16 for marriage currently exists in federal legislation pertaining to Quebec, but has never been legislated for the rest of Canada. As a result, the common law applies, which is usually interpreted as a minimum age of 14 for boys and 12 for girls, but could be as low as 7. This Bill would now set 16 as the minimum age for marriage across Canada.

The *Civil Marriage Act* will also be amended to codify the legal requirement for free and enlightened consent to marriage. This is currently legislated in federal law for

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Quebec and is well established in the common law for the rest of the country. A forced marriage occurs where one or both spouses do not consent to the marriage. Consent is truly the most critical aspect of a lawful marriage. This amendment makes it clear that no Canadian should ever be forced to marry against their will and complements certain amendments to the *Criminal Code* which I will discuss shortly.

Amendments to the *Civil Marriage Act* will also codify the existing requirement that all previous marriages be dissolved prior to entering another marriage. This requirement exists in federal law applicable to Quebec and in the common law elsewhere. This approach is consistent with section 2 of the *Civil Marriage Act* and the longstanding *Criminal Code* prohibition against bigamous and polygamous marriages.

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Also in relation to polygamy, this Bill proposes amendments to the *Immigration and Refugee Protection Act* to specify that a permanent resident or foreign national is inadmissible on the grounds of practising polygamy in Canada. Under the current immigration law, non-citizens can only be removed in cases where there is a criminal conviction for practising polygamy, or where there is a finding of misrepresentation because they lied about the number of spouses the individual had at the time of their application. To increase our ability to prevent polygamy from occurring on Canadian soil, this Bill would prohibit both temporary and permanent residents from practising polygamy in Canada and provide for the removal of non-citizens who practise polygamy in Canada without the need for a *Criminal Code* conviction.

Coming back to the issues of early and forced marriage, this Bill proposes several amendments to the *Criminal Code* to

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better prevent Canadians from being victimized in these ways.

There are currently a range of *Criminal Code* provisions which may be relevant in forced marriage cases. For instance, in trying to cause a child to marry, parents might threaten, assault, or forcibly confine them. These are already offences, regardless of the motive. The proposed amendments in this Bill fill a legislative gap by creating offences which focus on the active participation in the forced or underage marriage ceremony itself.

The Bill proposes two new offences that would extend criminal liability to anyone who knowingly celebrates, aids or participates in a marriage ceremony where one or both of the spouses is either under the age of 16 or is marrying against their will. This would cover both those who conduct the marriage ceremony, and those, such as family members,

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who have full knowledge that a marriage is forced or involves a child under 16 and actively participate in the marriage ceremony such as transporting an unwilling bride to the ceremony or acting as a legal witness. However, it is also clear that a person cannot be prosecuted for merely being at the scene of a crime and witnessing it – to be prosecuted for this offence, a person would need to have engaged in some conduct specifically directed toward helping an early or forced marriage to occur.

The proposed offences address the social harm caused by the public sanctioning of these harmful practices. A forced marriage creates an unwanted legal bond that is difficult to break and within which sexual assault and other forms of violence are expected to occur. Studies have indicated that the vast majority of victims of a forced marriage are subjected to violence within that marriage.

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Similarly, girls who marry early are at far greater risk of: experiencing complications in pregnancy and childbirth, including higher maternal mortality rates; experiencing violence in the home; and having their education disrupted. Underage marriage violates girls' basic human rights and prevents them from fully participating in society.

These two new offences would be punishable by a maximum of five years imprisonment.

The Bill also proposes to make it an offence to remove a child from Canada for the purposes of a forced or underage marriage outside of Canada. This Government is aware of disturbing cases of Canadian children being taken abroad for a forced or early marriage. Child protection officials who believe that a child will be removed from Canada for a forced or underage marriage currently lack the requisite legal tools

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to intervene and prevent the child's removal from Canada.

This Bill will change that.

There is currently a provision in the *Criminal Code* that makes it a crime to take steps to remove a child ordinarily resident in Canada from the country with the intent that the child be subject to one of the listed offences. The offence is punishable by a maximum of five years imprisonment. This Bill would add the new offences related to an underage or forced marriage ceremony to the list of offences in the provision that makes it a crime to remove a child from Canada. I am confident that these proposed amendments will help prevent and deter the removal of children for such harmful practices, and effectively punish those perpetrators who violate the law.

Moreover, this Bill has other strong prevention measures to protect vulnerable Canadians and residents from early and

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forced marriages. The Bill proposes to introduce specific forced or underage marriage peace bonds. Peace bonds currently exist in the *Criminal Code* and are preventative court orders available in circumstances where a person fears on reasonable grounds that another person will cause them personal injury or will commit certain types of offences. The new forced or underage marriage peace bonds would be appropriately tailored to allow potential victims to seek protection against a pending forced or underage marriage. An order under the new peace bond provision could specifically:

- prohibit the person subject to the order from making arrangements or agreements for the forced or underage marriage of the victim;**
- require the person subject to the order to surrender passports in their possession;**
- prohibit them from leaving the country or taking a child out of the country; and**

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- **require them to participate in a family violence counselling program.**

We have heard that many victims of forced marriages are reluctant to contact the authorities prior to the marriage because they do not want their parents or other relatives prosecuted. Some victims have expressed the view that their parents are under the misguided belief that the marriage is in their child's best interest. These peace bonds offer victims an alternative to prevent the forced marriage without a prosecution or conviction of their family members. An individual subject to a peace bond is not charged with a criminal offence unless they either refuse to enter the peace bond or they breach it. These peace bonds also reinforce the clear message that forced and underage marriage will not be tolerated in Canada.

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Finally, in the area of violence motivated by so-called “honour”, it bears repeating that all forms of violence, whatever the motive, are fully prohibited by the criminal law. There is no need to create specific offences for “honour”–based violence.

This Bill would, however, amend the *Criminal Code* to limit the defence of provocation to ensure that it is never an excuse for murder that the victim did something lawful that led another person to feel so enraged and insulted that they killed.

The defence of provocation can currently be raised by a person who is found to have committed murder where they claim that they did so in the heat of passion in response to a “wrongful act or insult” by the victim that caused them to lose their self-control. If successful, even though the person is found to have committed murder, they are instead

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convicted of manslaughter, which has no mandatory minimum sentence unless a firearm is used. By contrast, a conviction for murder carries a mandatory minimum sentence of life imprisonment and a minimum of 10 years incarceration before being eligible for parole.

The defence of provocation has been raised in several so-called “honour” killing cases in Canada, on the basis that the victim’s behaviour – such as choosing one’s own marriage partner or making other such personal decisions for oneself without a family or a husband’s approval – amounted to a “wrongful act or insult” that, when considered in the context of the cultural community to which they belonged, provoked the accused to kill due to a sense of damaged “honour” or reputation. To date, the defence has not been successful in so-called “honour” killings in Canada, however, the defence remains available to be raised in similar cases in the future.

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The defence has been successfully invoked in spousal homicides of women in response to the legal conduct of the victim, including where the victim was simply trying to end the relationship or had said something that the killer found insulting, as well as in cases of real or perceived infidelity.

It is simply not appropriate to excuse murder because the killer was insulted, embarrassed or suffered other emotional upset. It is certainly not appropriate to excuse murder because a person was unable to control the actions and decisions of another person. In Canada, we are all equal, and we are all entitled to make our own choices. No one deserves to be killed because their choices are unwelcome to their spouse, their parents, or anyone else. Accordingly, this Bill proposes to restrict the application of the defence of provocation so that it is no longer available to those who intentionally kill another person in response to conduct that

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was legal. It will only be available where the victim's conduct amounted to a relatively serious criminal offence.

I hope that all Members of this House will join me in supporting Bill S-7, which signals to all in Canadian society - and the world - that Canada will not tolerate early and forced marriage and other harmful practices taking place in our country.

Thank you.

Justice - Speech #2

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

Canada's Leadership – Domestic and International Considerations

Length: words **1,688**

Time: 12 minutes

DRAFT

**Speaking Notes
for the**

Honourable XXX

For XXX

***Bill S-7: Zero Tolerance for Barbaric Cultural Practices
Act***

Ottawa, ON

December 2014

Check against delivery

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Canada's Leadership – Domestic and International Considerations

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

**I am pleased to have the opportunity today to speak on
Bill S-7, regarding Canada's commitment to preventing and
responding to early and forced marriage and other barbaric
cultural practices, both at home and abroad.**

**I am proud to say that Canada has made ending child, early
and forced marriage an international development and
foreign policy priority. For example, in October 2013, Canada
announced \$5 million in new money to address the causes
and consequences of early and forced marriage around the
world. These funds were used for programs in Afghanistan,
Ethiopia, Ghana, Somalia, and Zimbabwe.**

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More recently, in July 2014, the Minister of Foreign Affairs announced that Canada is contributing \$20 million over two years to UNICEF toward ending child, early and forced marriage. The UNICEF project aims to accelerate the movement to end child marriage in Bangladesh, Burkina Faso, Ethiopia, Ghana, Yemen and Zambia by supporting efforts in these countries to strengthen both programming and political support to end the practice.

Canada has also played an important role in bringing world attention and action to this issue of child, early and forced marriage through actions such as spearheading the initiative to establish the International Day of the Girl Child and co-leading with Zambia a United General Assembly resolution on child, early and forced marriage.

Similarly, Canada contributes to efforts to combat female genital mutilation (FGM) by working with UN agencies, and

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bilaterally with other countries supporting projects to address violence against women and eliminate harmful cultural practices like FGM.

These barbaric practices predominantly affect women and girls and impair their rights and ability to fully participate in society. Equality of men and women under the law is a fundamental Canadian value that shapes Canadian policy and actions both in the international and the domestic arenas.

Free and healthy societies require the full participation of women. Sadly, in many countries around the world, millions of women and girls continue to be prevented from full participation by violence, including through the inhumane practices of early and forced marriage. It is both the reality and the strength of our country that Canadians of very different origins live and work side by side, together. New

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Canadians work hard to learn our languages, our values, and our traditions, and in turn, are welcomed as equal members of the Canadian family. The languages, cultures and traditions of new Canadians add to the diversity of Canada which enriches our lives. At the same time, harmful cultural practices which go against Canadian values, and are in violation of Canada's international human rights commitments, will not be tolerated in Canada.

This Government is aware of cases of Canadian children being taken abroad for an early or forced marriage and has concerns that girls who are from countries where the practice of female genital mutilation is common, may be at risk. Canada is committed to protecting and defending those who are vulnerable to these practices, both domestically and internationally.

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This Government has demonstrated its leadership in this area by introducing this Bill, and also by continuing to work with our international partners and community members to find ways to end such harmful practices which tragically are happening each and every day around the world.

Bill S-7 will introduce a national minimum age of marriage of 16, below which no marriage may be contracted under any circumstances. It expands current federal law regarding a minimum age of 16 to marry in Quebec to now apply across the country. Setting the minimum age to marry across Canada at 16 is consistent with current practices in like-minded countries, such as the United Kingdom, Australia, and New Zealand.

Provincial and territorial legislation will still impose requirements for marriages between the ages of 16 and 18 or 19 (depending on the age of majority in the province or

SECRET

territory). Requirements such as parental consent or a court order provide added safeguards to permit mature minors between the ages of 16 and 18 to marry in exceptional circumstances. However, given that many forced marriages are perpetrated by parents, parental consent to the marriage of a minor may be insufficient to protect against forced marriage where it is the parents who are forcing the marriage upon an unwilling child. As a result, the Minister of Justice has engaged his provincial and territorial counterparts in a discussion with respect to enhancing legislative measures which fall within their constitutional jurisdiction to protect against forced marriages by requiring judicial consent in all marriages involving a minor.

Some may query why this Bill has not raised the minimum age to marry to 18. The approach in this Bill seeks to balance protections for children against flexibility to reflect the choices of mature minors between the ages of 16 and 18 who

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make a commitment to one another, such as those who have a child together. It also aligns with the approaches taken in other like-minded countries, as I have previously mentioned.

Bill S-7 also proposes to amend the *Criminal Code* to create the offences of knowingly celebrating, aiding or actively participating in a marriage ceremony involving a person under the age of 16 or a forced marriage. The new offences of actively participating in a forced or underage marriage ceremony specifically address the social harm caused by the public endorsement of an unwanted or harmful legal bond, within which sexual violence is expected to occur.

These offences will apply to individuals who engage in conduct specifically intended to facilitate the marriage ceremony – such as acting as a legal witness – knowing that one of the parties is under the age of 16 or marrying against

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their will. These proposed new offences would be punishable by a maximum of five years imprisonment.

The proposed amendments will also criminalize taking steps to remove a child from Canada for the purpose of an underage or forced marriage. This is done by adding the new offences in relation to underage and forced marriage to the existing offence of removing a child from Canada to commit female genital mutilation or sexual offences. This offence is punishable by a maximum of five years imprisonment and Bill S-7 maintains this penalty. Countries such as Australia and Norway have similar criminal measures which Canada has looked to in the development of this Bill.

This Bill will also create a new peace bond that can be ordered by a court where there are reasonable grounds to believe that a person will participate in an early or forced marriage ceremony, or will take a child out of Canada with

SECRET

the intent that they be subjected to an early or forced marriage ceremony abroad. As part of the conditions that would be available, a court could order a defendant to avoid making any plans or arrangements for a marriage, whether inside or outside Canada, to surrender travel documents, or to participate in a family violence counselling program. The creation of specific forced or underage marriage peace bonds to prevent someone from being taken abroad for the purposes of early or forced marriage are similar to forced marriage civil protection orders in the United Kingdom.

In addition, the Bill proposes to amend the *Criminal Code* to address concerns that, although unsuccessful to date, the defence of provocation has been raised in several so-called “honour” killing cases in Canada. The defence of provocation currently allows a person found to have committed murder (which carries a mandatory sentence of life in prison) to seek a conviction of manslaughter instead

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(with no minimum sentence unless a firearm is used) by arguing that the victim's conduct provoked them to lose self-control and kill.

Currently, any conduct by the victim – including insults and other forms of offensive behaviour that are lawful – can potentially qualify as provocation if it is found to be sufficient to cause an ordinary person to lose self-control, the accused was not expecting it and the killing was sudden.

The proposed amendment would limit the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family “honour” or reputation, cannot excuse murder; only conduct by the victim that amounts to a relatively serious criminal offence (i.e. an offence under the *Criminal Code* punishable by at least 5

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years in prison) could be argued to be “provocation” for the purposes of the defence.

The provocation defence has either been abolished or restricted in almost every common law jurisdiction like Canada, such as most Australian states, New Zealand and the United Kingdom.

Finally, this Bill proposes amendments to the *Immigration and Refugee Protection Act* (IRPA) to increase the Government of Canada’s ability to prevent polygamy from occurring in Canada. While current IRPA provisions require foreign nationals wishing to become permanent residents to have only one spouse, once in Canada it is difficult to find these individuals inadmissible. A criminal conviction or finding of misrepresentation is currently required before polygamists can be found inadmissible. This Bill would make amendments to the IRPA so that a polygamist permanent

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resident or foreign national who is or will be physically present in Canada with any of their spouses would be considered to be practising polygamy in Canada. The permanent resident or foreign national could be found inadmissible *on that basis alone*, without requiring evidence that the person misrepresented their situation or has a criminal conviction.

I have discussed some of the very important aspects of this Bill, to highlight that Canada is taking concrete action in ensuring that early and forced marriage, and similar harmful cultural practices, do not occur on Canadian soil, as promised in the October 2013 Speech from the Throne. This Bill also sends a strong message that Canada condemns such practices, not only domestically but internationally as well. Canada has and will continue to be seen as an international leader on these important human rights issues.

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I hope that the Government will get the support of all Honourable Members in protecting victims, predominately women and girls, from such intolerable and inhumane practices.

Thank you.

Justice - Speech #3

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

Early and Forced Marriage in Canada

Length: words 1,574

Time: 12 minutes

DRAFT

Speaking Notes

for the

Honourable XXX

For XXX

***Bill S-7: Zero Tolerance for Barbaric Cultural Practices
Act***

Ottawa, ON

December 2014

Check against delivery

SECRET

Early and Forced Marriage in Canada

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

I am very pleased to rise today and speak about Bill S-7: the *Zero Tolerance for Barbaric Cultural Practices Act*. Among other things, this Bill strongly condemns underage and forced marriage, which are deplorable human rights violations, that are regrettably taking place with Canadians, and may even be taking place on Canadian soil.

A forced marriage is one in which at least one of the two spouses is entering the marriage without his or her free and enlightened consent. There is a clear distinction between forced and arranged marriages. In an arranged marriage, both spouses consent to the marriage.

It is difficult to quantify the numbers of forced marriages involving Canadians that are taking place abroad, or even

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whether there are any forced marriages taking place on our soil, but studies have revealed that forced marriages involving Canadians do indeed take place .

In August 2013, the South Asian Legal Clinic of Ontario published a report that found that front-line service providers in Ontario had encountered 219 instances involving persons in forced marriages, between 2010 and 2012. In 92% of the cases, the victim of the forced marriage was a female and in 30% of these cases the victim was under the age of 18. All of the individuals forced into marriage experienced violence.

A study conducted for Justice Canada that was based on interviews with service providers from Montréal and Toronto in 2008, also confirmed that there were Canadians who had been subjected to forced marriage and concluded that “it is the government's duty to address the problem of forced

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marriage and to protect those who are threatened with it or are already its victims.”

Another study for Justice Canada conducted in Edmonton, Calgary and Vancouver in 2010, concluded that “based upon the estimate from service providers who are dealing with the incidence of forced marriage in Western Canada, our conclusion is that forced marriage is *not sporadic* in Western Canada ... half of the respondents said it is ‘widespread’ or ‘common’ or ‘becoming common’.”

The victims of this deplorable practice are most often young women, and occasionally men, who are being forced, usually by their own parents or other family members, to marry someone they are unwilling to marry. These young people are sometimes even made to abandon their education for the purposes of being married against their will. Some victims are told that they are going overseas to a relative’s wedding,

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only to discover upon arrival that the wedding ceremony is, in fact, their own.

Indeed, Canadian consular affairs has received over one hundred requests for consular assistance from Canadians abroad related to forced marriages since 2009.

Marriage is an important societal pillar and creates significant legal consequences. Anyone entering into a marriage should do so with clear forethought and utmost willingness. Any attempts to force someone into a marriage go against Canadian human rights and values and indeed, against international human rights standards.

The same applies to early or underage marriage.

International studies show that girls who marry early are at far greater risk of: experiencing complications in pregnancy and childbirth, including higher maternal mortality rates;

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experiencing violence in the home; and having their education disrupted. It is clear that underage marriage violates girls' basic human rights and prevents them from fully participating in society.

There is currently no national minimum age below which no marriage may be legally contracted in Canada. Federal legislation applicable only in Quebec, sets the minimum age at 16. Elsewhere in Canada, the common law is unclear but appears to set the minimum age at 14 for boys, 12 for girls, and sometimes as low as 7.

Bill S-7 will introduce a national minimum age for marriage of 16, below which no marriage may be contracted under any circumstances. Setting the minimum age to marry across Canada at 16 is consistent with current practices in like-minded countries, such as the United Kingdom, Australia, and New Zealand.

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Provincial and territorial legislation will still impose requirements for marriages between the ages of 16 and 18 or 19 (depending on the age of majority in the province or territory). Requirements such as parental consent or a court order provide added safeguards to permit mature minors between the ages of 16 and 18 to marry in exceptional circumstances, such as where they have a child together and wish to marry.

However, parental consent to the marriage of a minor may not be sufficient to protect against forced marriage, because it is typically the parents who are forcing the marriage upon an unwilling child. As a result, the Minister of Justice has engaged his provincial and territorial counterparts in a discussion with respect to enhancing legislative measures which fall within their constitutional jurisdiction to protect

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against forced marriages by requiring judicial consent in all marriages involving a minor.

We have seen tragic consequences for young people who refuse a forced marriage. Some run away and go into hiding. Some are beaten or even murdered, because of a misguided belief that their refusal to enter or continue in a forced marriage has tarnished the family “honour”.

On January 2, 2010, a young woman was brutally beaten by her uncle and her three cousins in Calgary because she refused to marry a man her uncle had chosen for her. They were convicted of assault causing bodily harm in 2013.

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On April 17, 2009, a 19 year old woman fled her home in Montréal, terrified because her parents were going to force her to marry a man she didn't want to marry.

A few months later, on June 30th, that same woman, her two younger sisters and her father's first wife in a polygamous marriage, were brought together on the pretext of a family vacation. Their bodies were found in a car submerged in the Kingston locks. The barbaric "honour" killings of the young Shafia sisters and their step-mother came as a shock to the whole country. These brutal murders horrified Canadians and prompted many questions about how they could have been prevented.

Preventing such tragedies from occurring again is the primary objective of this laudable Bill. It contains tools to protect potential victims from an impending forced or underage marriage in the form of specific peace bonds.

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These can be ordered by a court where there are reasonable grounds to believe that a person will participate in an early or forced marriage ceremony, or will take a child out of Canada with the intent that they be subjected to an early or forced marriage ceremony abroad. Under these peace bonds, a court could order a defendant to avoid making any plans or arrangements for a marriage (whether inside or outside Canada); to surrender travel documents; and to participate in a family violence counselling program.

The Bill also proposes to criminalize taking steps to remove a child from Canada for the purposes of a forced or underage marriage. This will be done by expanding the current provision in the *Criminal Code* which prohibits removing a child from Canada to commit female genital mutilation and sexual offences, in order to also criminalize taking steps to remove a child from Canada for the purposes of forced marriages and marriages under the age of 16.

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These proposed amendments are designed to empower victims by giving them tools to prevent underage or forced marriages and by permitting them to clearly articulate to their family members or relatives forcing them to marry that this conduct is unacceptable in Canada and constitutes a crime.

These critical preventative measures would not be possible without the proposed inclusion of two new offences in the *Criminal Code* of knowingly celebrating, aiding or actively participating in a marriage ceremony involving a person who is marrying against their will or is under the age of 16. These two new offences serve as building blocks for the preventative measures that I just mentioned. They also serve to directly denounce behaviour that provides social legitimacy to the imposition of an unwanted or harmful legal bond that is difficult to sever and within which sexual assaults are expected to occur.

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These new offences would apply where a marriage celebrant knows that one of the people they are marrying does not consent to the marriage or is underage, regardless of whether the celebrant is legally authorized to officiate the marriage or not. The offences would also apply where a person, such as a parent or other family member, knowingly and willingly takes certain actions to help ensure that the forced or underage marriage takes place, such as being a signatory witnesses or transporting the person being married to the ceremony.

These offences would not criminalize mere guests in the wedding ceremony who otherwise do not actively try to assist the marriage to take place. Most importantly, these offences in no way subject the person who is forced to marry or who marries while underage to criminal liability. They are the victims of these harmful practices.

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A person found guilty of these new offences could face up to five years imprisonment. This is comparable to like-minded countries with specific offences related to forced marriages.

I fully agree with the intentions of this Bill, and I sincerely hope that the Government will get the support of all Honourable Members so that people from all communities within Canada, have equal opportunities and the same right to choose whether to marry, when to marry and who they marry.

Thank you.

Justice - Speech #1

Bill S-XX: Zero Tolerance for Barbaric Cultural Practices Act

General overview

Length: words 2,114

Time: 15 minutes

check length - seems
long for 15 mins.
(ie. compare to speech #3)

**Speaking Notes
for the**

Honourable XXX

For XXX

***Bill S-XX: Zero Tolerance for Barbaric Cultural Practices
Act***

Ottawa, ON

November 2014

Check against delivery

SECRET

General Overview of *Bill S-XX: Zero Tolerance for Barbaric Cultural Practices Act*

Mr. Speaker, I am pleased to have the opportunity today to speak on Bill S-XX, the *Zero Tolerance for Barbaric Cultural Practices Act*. In the Speech from the Throne in October 2013, our Government promised that it would ensure that early and forced marriage and other harmful cultural practices, such as polygamous marriages and so-called “honour” based violence, do not occur on Canadian soil.

Bill S-XX delivers on that promise. These harmful practices typically affect women and girls and violate basic human rights. They are unequivocally unacceptable in Canadian society. Our Government is therefore taking action in strengthening the laws in Canada to prevent and respond to such practices.

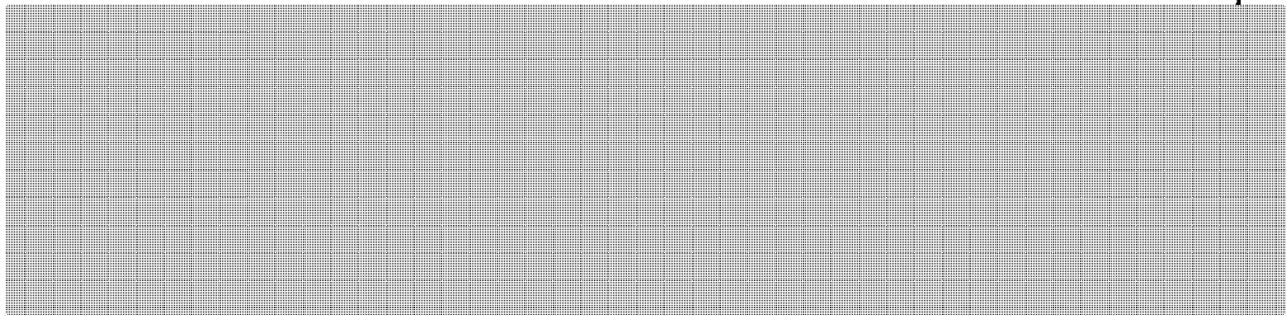
SECRET

This Bill will do many things to address early and forced marriage and other related, harmful cultural practices. It will establish in the *Civil Marriage Act* a national minimum age of 16 for marriage, an age below which no marriage may be contracted anywhere in Canada. This is to protect our most vulnerable in society – our children - from early marriages.

s.21(1)(a)

s.21(1)(b)

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The *Civil Marriage Act* will also be amended to codify the legal requirement for free and enlightened consent to marriage. This is currently legislated in federal law for Quebec and is well established in the common law (court decisions) for the rest of the country. A forced marriage occurs where one or both spouses do not consent to the marriage. Consent is truly the most critical aspect of a lawful marriage. This amendment makes it clear that no Canadian should ever be forced to marry against their will and complements certain amendments to the *Criminal Code* which I will discuss shortly.

s.21(1)(a)

s.21(1)(b)

Amendments to the *Civil Marriage Act* will also codify the existing requirement that all previous marriages be dissolved

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prior to entering another marriage. This requirement exists in federal law applicable to Quebec and in the common law elsewhere. This approach is also consistent with the longstanding *Criminal Code* prohibition against bigamous and polygamous marriages.

Also in relation to polygamy, this Bill proposes amendments to the *Immigration and Refugee Protection Act* to specify that a permanent resident or foreign national is inadmissible on the grounds of practising polygamy in Canada. Under the current immigration law, non-citizens can only be removed in cases where there is a criminal conviction for practising polygamy, or where there is a finding of misrepresentation because they lied about the number of spouses the individual had at the time of their application. To increase our ability to prevent polygamy from occurring on Canadian soil, this Bill would prohibit both temporary and permanent residents from practising polygamy in Canada and provide

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for the removal of non-citizens who practise polygamy in Canada without the need for a *Criminal Code* conviction.

Furthermore, and coming back to the issues of early and forced marriage, this Bill proposes several amendments to the *Criminal Code* to better prevent Canadians from being victimized in these ways. The amendments will clarify that it is an offence for a marriage officiant to knowingly solemnize a marriage in contravention of federal law, therefore specifically in violation of the three amendments to the *Civil Marriage Act* – namely officiating an underage, forced or polygamous marriage.

There are currently a range of *Criminal Code* provisions which may be relevant in forced marriage cases. For instance, in trying to cause a child to marry, parents might threaten, assault, or forcibly confine them. These are already offences, regardless of the motive. The proposed

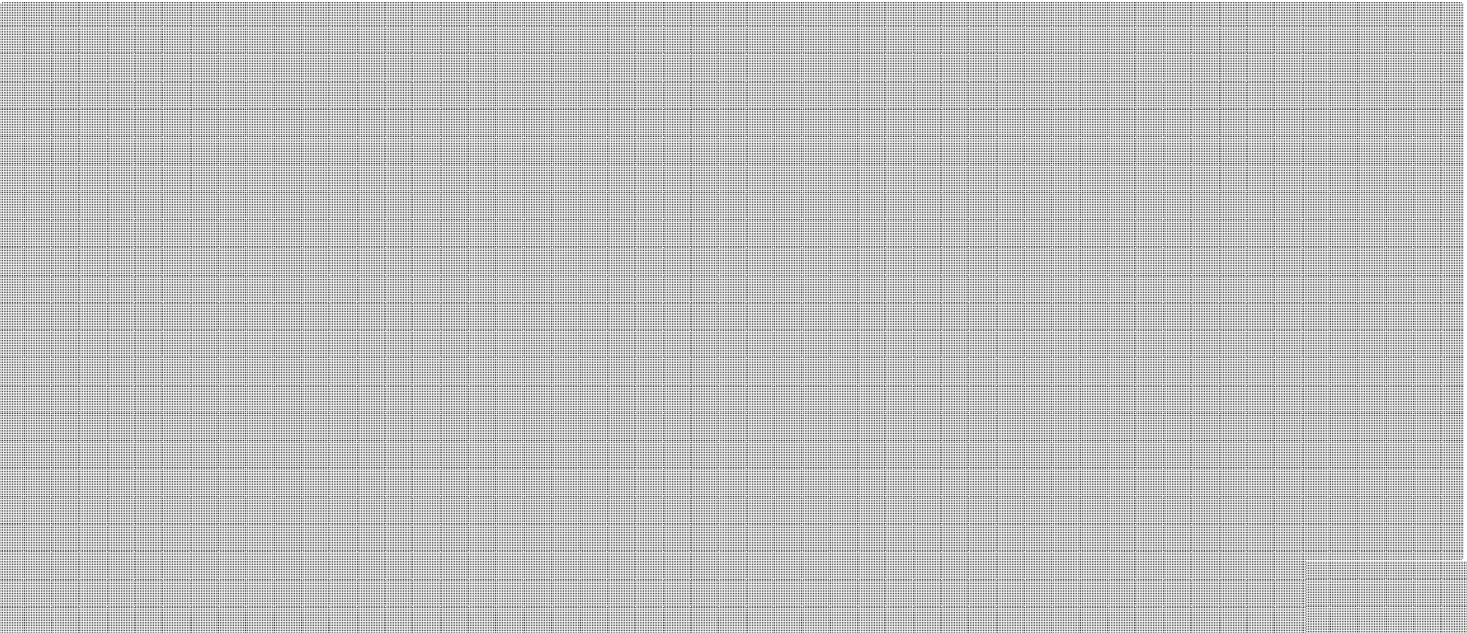
SECRET

amendments in this Bill fill a legislative gap by creating offences which focus on the active participation in the forced or underage marriage ceremony itself.

The Bill proposes two new offences that would extend criminal liability to anyone who knowingly celebrates, aids or participates in a marriage ceremony where one or both of the spouses is either under the age of 16 or is marrying against their will. For example, family members who have full knowledge that a marriage is forced or involves a child under 16 and actively participate in the marriage ceremony -- such as transporting an unwilling bride to the ceremony or acting as a legal witness -- will be caught by the new offences.

However, it is also clear that a person cannot be prosecuted for merely being at the scene of a crime and witnessing it -- to be prosecuted for this offence, a person would need to have engaged in some conduct specifically directed toward helping an early or forced marriage to occur.

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The proposed offences address the social harm caused by the public sanctioning of these harmful practices. A forced marriage creates an unwanted legal bond that is difficult to break and within which sexual assault and other forms of violence are expected to occur. Studies have indicated that the vast majority of victims of a forced marriage are subjected to violence within that marriage.

s.21(1)(a)
s.21(1)(b)

Similarly, girls who marry early are at far greater risk of: experiencing complications in pregnancy and childbirth, including higher maternal mortality rates; experiencing

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violence in the home; and having their education disrupted.

Underage marriage violates girls' basic human rights and prevents them from fully participating in society.

These two new offences would be punishable by a maximum of five years imprisonment.

The Bill also proposes to make it an offence to remove a child from Canada for the purposes of a forced or underage marriage outside of Canada. This Government is aware of disturbing cases of Canadian children being taken abroad for a forced or early marriage. We have been informed that child protection officials who believe that a child will be removed from Canada for a forced or underage marriage currently lack the requisite legal tools to intervene and prevent the child's removal from Canada. This Bill will change that.

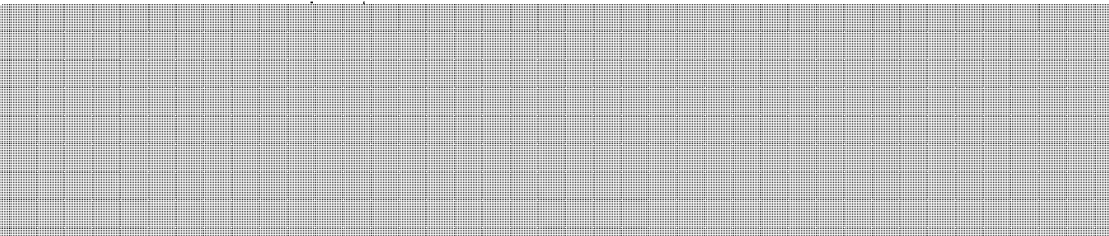
SECRET

There is currently a provision in the *Criminal Code* that makes it a crime to take steps to remove a child ordinarily resident in Canada from the country with the intent that the child be subject to one of the listed offences. The offence is punishable by a maximum of five years imprisonment. This Bill would add the new offences related to an underage or forced marriage ceremony to the list of offences in the provision that makes it a crime to remove a child from Canada. I am confident that these proposed amendments will help prevent and deter the removal of children for such harmful practices, and effectively punish those perpetrators who violate the law.

Moreover, this Bill has other strong prevention measures to protect vulnerable Canadians and residents from early and forced marriages. The Bill proposes to introduce specific forced or underage marriage peace bonds. Peace bonds currently exist in the *Criminal Code* and are preventative

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court orders available in circumstances where a person fears on reasonable grounds that another person will cause them personal injury or will commit certain types of offences. The new forced or underage marriage peace bonds would be appropriately tailored to allow potential victims to seek protection against a pending forced or underage marriage. An order under the new peace bond provision could specifically:

- prohibit the person subject to the order from making arrangements or agreements for the forced or underage marriage of the victim;
- 
- prohibit them from leaving the country or taking a child out of the country; and
- require them to participate in a family violence counselling program.

s.21(1)(a)

s.21(1)(b)

SECRET

We have heard that many victims of forced marriages are reluctant to contact the authorities prior to the marriage because they do not want their parents or other relatives prosecuted for their use of force or coercion. Some victims have expressed the view that their parents are under the misguided belief that the marriage is in their child's best interest. These peace bonds offer victims an alternative to prevent the forced marriage that does not lead to a prosecution or conviction of their family members. An individual subject to a peace bond is not charged with a criminal offence unless they either refuse to enter the peace bond or they breach it. These peace bonds also re-inforce the clear message that forced and underage marriage will not be tolerated in Canada.

s.21(1)(a)

s.21(1)(b)

SECRET

This Bill would, however, amend the *Criminal Code* to limit the defence of provocation to ensure that it is never an excuse for murder that the victim did something lawful that led another person to feel so enraged and insulted that they killed. *new para -* *currently* The defence of provocation can be raised by a person who is found to have committed murder where they claim that they did so in the heat of passion in response to a "wrongful act or insult" by the victim that caused them to lose their self-control. If successful, even though the person is found to have committed murder, they are instead convicted of manslaughter, which has no mandatory minimum sentence unless a firearm is used. By contrast, a conviction for murder carries a mandatory minimum sentence of life imprisonment and a minimum of 10 years incarceration before being eligible for parole.

s.21(1)(a)

s.21(1)(b)

SECRET

The defence of provocation has been raised in several so-called "honour" killing cases in Canada, on the basis that the victim's behaviour – such as choosing one's own marriage partner or making other such personal decisions for oneself without a family or a husband's approval – amounted to a "wrongful act or insult" that, when considered in the context of the cultural community to which they belonged, provoked the accused to kill due to a sense of damaged "honour" or reputation. To date, the defence has not been successful in so-called "honour" killings in Canada, however, the defence remains available to be raised in similar cases in the future.

The defence has been successfully *involved* ~~applied~~ in spousal homicides of women in response to the legal conduct of the victim, including where the victim was simply trying to end the relationship or had said something that the killer found insulting, as well as in cases of real or perceived infidelity.

SECRET

It is simply not appropriate to excuse murder because the killer was insulted, embarrassed or caused other emotional upset. It is certainly not appropriate to excuse murder because a person was unable to control the actions and decisions of another person. In Canada, we are all equal, and we are all entitled to make our own choices. No one deserves to be killed because their choices are unwelcome by their spouse, their parents, or anyone else. Accordingly, this Bill proposes to restrict the application of the defence of provocation so that it is no longer available to those who intentionally kill another person in response to conduct that was legal. The defence will only be available where the victim's conduct amounted to a relatively serious criminal offence.

s.21(1)(a)

s.21(1)(b)

SECRET

Thank you.

s.21(1)(a)

s.21(1)(b)

DRAFT

Justice - Speech #2

Bill S-XX: Zero Tolerance for Barbaric Cultural Practices Act

Canada's Leadership – Domestic and International Considerations

Length: words 1,719

Time: 12 minutes

**Speaking Notes
for the**

Honourable XXX

For XXX

***Bill S-XX: Zero Tolerance for Barbaric Cultural Practices
Act***

Ottawa, ON

November 2014

Check against delivery

SECRET

Canada's Leadership – Domestic and International Considerations

Bill S-XX: Zero Tolerance for Barbaric Cultural Practices Act

I am pleased to have the opportunity today to speak on Bill S- XX, regarding Canada's commitment to preventing and responding to early and forced marriage and other barbaric cultural practices, both at home and abroad.

I am proud to say that Canada has made ending child, early and forced marriage an international development and foreign policy priority. For example, in October 2013, Canada announced \$5 million in new money to address the causes and consequences of early and forced marriage around the world. These funds were used for programs in Afghanistan, Ethiopia, Ghana, Somalia, and Zimbabwe.

SECRET

More recently, in July 2014, the Minister of Foreign Affairs announced that Canada is contributing \$20 million over two years to UNICEF toward ending child, early and forced marriage. The UNICEF project aims to accelerate the movement to end child marriage in Bangladesh, Burkina Faso, Ethiopia, Ghana, Yemen and Zambia by supporting efforts in these countries to strengthen programming and political support to end the practice.

*encouraging?
(something is
needed here
to parallel
"supporting"
is first part
of phrase*

Canada has also played an important role in bringing world attention and action to this issue of child, early and forced marriage through actions such as spearheading the initiative to establish the International Day of the Girl Child and co-leading with Zambia a United General Assembly resolution on child, early and forced marriage.

Similarly, Canada contributes to efforts to combat female genital mutilation (FGM) by working with UN agencies, and

SECRET

bilaterally with other countries supporting projects to address violence against women and eliminate harmful cultural practices like FGM.

These barbaric practices predominantly affect women and girls and impair their rights and ability to fully participate in society. Equality of men and women under the law is a fundamental Canadian value that shapes Canadian policy and actions both in the international and the domestic arenas.

Free and healthy societies require the full participation of women. Sadly, in many countries around the world, millions of women and girls continue to be prevented from full participation by violence, including through the inhumane practice of early and forced marriage. It is the reality of our country that Canadians of very different origins live and work side by side, together. New Canadians work hard to learn our

SECRET

languages, our values, and our traditions, and in turn, are
welcomed as equal members of the Canadian family

This Government is aware of cases of Canadian children
being taken abroad for an early or forced marriage and has
concerns that girls who are from countries where the
practice of female genital mutilation is common, may be at
risk. Canada is committed to protecting and defending those
who are vulnerable to these practices, both domestically and
internationally.

This Government has demonstrated its leadership in this
area by introducing this Bill, and also by continuing to work
with our international partners and community members to

s.21(1)(a)

s.21(1)(b)

SECRET

find ways to end such harmful practices which tragically are happening each and every day around the world.

Bill S-XX will introduce a national minimum age of marriage of 16, below which no marriage may be contracted under any circumstances. It expands current federal law regarding a minimum age of 16 to marry in Quebec to now apply across the country. Setting the minimum age to marry across Canada at 16 is consistent with current practices in like-minded countries, such as the United Kingdom, Australia, and New Zealand.

Provincial and territorial legislation will still impose requirements for marriages between the ages of 16 and 18 or 19 (depending on the age of majority in the province or territory). Requirements such as parental consent or a court order provide added safeguards to permit mature minors between the ages of 16 and 18 to marry in exceptional

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circumstances.




Some may query why this Bill has not raised the minimum age to marry to 18. The approach in this Bill seeks to balance protections for children against flexibility to reflect the choices of mature minors between the ages of 16 and 18 who make a commitment to one another, particularly where they have a child together. It also aligns with the approaches

s.21(1)(a)

s.21(1)(b)

SECRET

taken in other like-minded countries, as I have previously mentioned.



These offences will apply to individuals who engage in conduct specifically intended to facilitate the marriage ceremony – such as acting as a legal witness – knowing that one of the parties is under the age of 16 or marrying against

s.21(1)(a)
s.21(1)(b)

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their will. These proposed new offences would be punishable by a maximum of five years imprisonment.



This Bill will also create a new peace bond that can be ordered by a court where there are reasonable grounds to believe that a person will participate in an early or forced marriage ceremony, or will take a child out of Canada with

SECRET

the intent that they be subjected to an early or forced marriage ceremony abroad. As part of the conditions that would be available, a court could order a defendant to avoid making any plans or arrangements for a marriage, whether inside or outside Canada, to surrender travel documents, or to participate in a family violence counselling program. The creation of specific forced or underage marriage peace bonds to prevent someone from being taken abroad for the purposes of early or forced marriage are similar to forced marriage civil protection orders in the United Kingdom.

In addition, the Bill proposes to amend the *Criminal Code* to address concerns that, although unsuccessful to date, the defence of provocation has been raised in several so-called “honour” killing cases in Canada. The defence of provocation currently allows a person found to have committed murder (which carries a mandatory sentence of life in prison) to seek a conviction of manslaughter instead

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(with no minimum sentence unless a firearm is used) by arguing that the victim's conduct provoked them to lose self-control and kill.

Currently, any conduct by the victim – including insults and other forms of offensive behaviour that are lawful – can potentially qualify as provocation if it is found to be sufficient to cause an ordinary person to lose self-control, the accused was not expecting it and the killing was sudden. The proposed amendment would limit the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family “honour” or reputation, cannot excuse murder; only conduct by the victim that amounts to a relatively serious criminal offence (i.e. an offence under the *Criminal Code* punishable by at least 5 years in prison) could be argued to be “provocation” for the purposes of the defence.

P. new para

SECRET

The provocation defence has either been abolished or restricted in almost every common law jurisdiction like Canada, such as Australian, New Zealand and the United Kingdom.

Finally, this Bill proposes amendments to the *Immigration and Refugee Protection Act* (IRPA) to increase the Government of Canada's ability to prevent polygamy from occurring in Canada. While current IRPA provisions require foreign nationals wishing to become permanent residents to have only one spouse, once in Canada it is difficult to find these individuals inadmissible. A criminal conviction or finding of misrepresentation is currently required before polygamists can be found inadmissible. This Bill would make amendments to the IRPA so that a polygamist permanent resident or foreign national who is or will be physically present in Canada with any of their spouses would be

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considered to be practising polygamy in Canada. The permanent resident or foreign national could be found inadmissible *on that basis alone*, without requiring evidence that the person misrepresented their situation or has a criminal conviction.

I have discussed some of the very important aspects of this Bill, to highlight that Canada is taking concrete action in ensuring that early and forced marriage, and similar harmful cultural practices, do not occur on Canadian soil, as promised in the October 2013 Speech from the Throne. This Bill also sends a strong message that Canada condemns such practices, not only domestically but internationally as well. Canada has and will continue to be seen as an international leader on these important human rights issues.

I hope that the Government will get the support of all Honourable Members in protecting victims, predominately

SECRET

women and girls, from such intolerable and inhumane
practices.

Thank you.

DRAFT

Justice - Speech #3

Bill S-XX: Zero Tolerance for Barbaric Cultural Practices Act

Early and Forced Marriage in Canada

Length: words 1,698

Time: 15 minutes

**Speaking Notes
for the**

Honourable XXX

For XXX

***Bill S-XX: Zero Tolerance for Barbaric Cultural Practices
Act***

Ottawa, ON

November 2014

Check against delivery

SECRET

Early and Forced Marriage in Canada

Bill S-XX: Zero Tolerance for Barbaric Cultural Practices Act

I am very pleased to rise today and speak about Bill S-XX: *Zero Tolerance for Barbaric Cultural Practices Act*. Among other things, this Bill strongly condemns underage and forced marriage, which are deplorable human rights violations, that are regrettably taking place on Canadian soil.

A forced marriage is one in which at least one of the two spouses is entering the marriage without his or her free and enlightened consent. There is a clear distinction between forced and arranged marriages. In an arranged marriage, both spouses consent to the marriage.

It is difficult to quantify the numbers of forced marriages occurring in Canada or involving Canadians abroad, but


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studies have revealed that forced marriages do indeed take place on our soil and with Canadians taken overseas.

In August 2013, the South Asian Legal Clinic of Ontario published a report that found 219 forced marriage cases in Ontario alone, between 2010 and 2012. In 92% of the cases, the victim of the forced marriage was a female and in 30% of these cases the victim was under the age of 18. All of the individuals forced into marriage experienced violence.

s.21(1)(a)

s.21(1)(b)



Another study for Justice Canada conducted in Edmonton, Calgary and Vancouver in 2010, concluded that "based upon

SECRET

the estimate from service providers who are dealing with the incidence of forced marriage in Western Canada, our conclusion is that forced marriage is *not sporadic* in Western Canada ... half of the respondents said it is 'widespread' or 'common' or 'becoming common'."

The victims of this deplorable practice are most often young women, and occasionally men, who are being forced, usually by their own parents or other family members, to marry someone they are unwilling to marry. These young people are sometimes even made to abandon their education for the purposes of being married against their will. Some victims are told that they are going overseas to a relative's wedding, only to discover upon arrival that the wedding ceremony is, in fact, their own.

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Indeed, Canadian consular affairs has received over one hundred requests for consular assistance from Canadians abroad related to forced marriages since 2009.

Marriage is an important societal pillar and a legal contract. Anyone entering into a marriage should do so with clear forethought and utmost willingness. Any attempts to force someone into a marriage go against Canadian human rights and values and indeed, against international human rights standards.

The same applies to early or underage marriage.

International studies show that girls who marry early are at far greater risk of: experiencing complications in pregnancy and childbirth, including higher maternal mortality rates; experiencing violence in the home; and having their education disrupted. It is clear that underage marriage

SECRET

violates girls' basic human rights and prevents them from fully participating in society.

There is currently no national minimum age below which no marriage may be legally contracted in Canada. Federal legislation applicable only in Quebec, sets the minimum age at 16. Elsewhere in Canada, the common law (court decisions) is unclear but appears to set the minimum age at 14 for boys, 12 for girls, and sometimes as low as 7.

Bill S-XX will introduce a national minimum age of marriage of 16, below which no marriage may be contracted under any circumstances. Setting the minimum age to marry across Canada at 16 is consistent with current practices in like-minded countries, such as the United Kingdom, Australia, and New Zealand.

SECRET

Provincial and territorial legislation will still impose requirements for marriages between the ages of 16 and 18 or 19 (depending on the age of majority in the province or territory). Requirements such as parental consent or a court order provide added safeguards to permit mature minors between the ages of 16 and 18 to marry in exceptional circumstances, such as where they have a child together and wish to marry.

s.21(1)(a)

s.21(1)(b)

SECRET

**We have seen tragic consequences of young people who
refuse a forced marriage. Some run away and go into hiding.
Some are beaten or even murdered, because of a**

s.21(1)(a)

s.21(1)(b)

SECRET

misconstrued belief that their refusal to enter or continue in a forced marriage has tarnished the family “honour”.

On April 17, 2009, a 19 year old woman fled her home in Montréal, terrified because her parents were going to force her to marry a man she didn't want to marry.

A few month later, on June 30th, that same woman, her two younger sisters and her father's first wife in a polygamous marriage, were brought together on the pretext of a family vacation. Their bodies were found in a car submerged in the Kingston locks. The barbaric “honour” killings of the young Shafia sisters and their step mother came as a shock to the whole country. These brutal murders horrified Canadians

s.21(1)(a)

s.21(1)(b)

SECRET

and prompted many questions about how they could have been prevented.

Preventing such tragedies from occurring again is the primary objective of this laudable Bill. It contains tools to protect potential victims from an impending forced or underage marriage in the form of specific peace bonds.

These can be ordered by a court where there are reasonable grounds to believe that a person will participate in an early or forced marriage ceremony, or will take a child out of Canada with the intent that they be subjected to an early or forced marriage ceremony abroad. Under these peace bonds, a court could order a defendant to avoid making any plans or arrangements for a marriage (whether inside or outside Canada); to surrender travel documents; and to participate in a family violence counselling program.

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The Bill also proposes to criminalize taking steps to remove a child from Canada for the purposes of a forced or underage marriage. This will be done by expanding the current provision in the *Criminal Code* which prohibits removing a child from Canada to commit female genital mutilation and sexual offences, in order to also criminalize taking steps to remove a child from Canada for the purposes of forced marriages and marriages under the age of 16.

insert para. @
empowering victims
from p.12 here

These critical preventative measures would not be possible without the proposed inclusion of two new offences in the *Criminal Code* of knowingly celebrating, aiding or actively participating in a marriage ceremony involving a person who is marrying against their will or is under the age of 16. These two new offences serve as building blocks for the preventative measures that I just mentioned. They also serve to directly denounce behaviour that provides social legitimacy to the imposition of an unwanted or harmful legal

SECRET

bond that is difficult to sever and within which sexual assaults are expected to occur.

These new offences would apply where a marriage celebrant knows that one of the people they are marrying does not consent to the marriage or is underage, regardless of whether the celebrant is legally authorized to officiate the marriage or not. The offences would also apply where a person, such as a parent or other family member, knowingly and willingly takes certain actions to help ensure that the forced or underage marriage takes place, such as being a signatory witnesses or transporting the person being married to the ceremony.

These offences would not criminalize mere guests in the wedding ceremony who otherwise do not actively try to assist the marriage to take place. Most importantly, these offences in no way subject the person who is forced to marry

SECRET

or who marries while underage to criminal liability. They are the victims of these harmful practices.

A person found guilty of these new offences could face up to five years imprisonment. This is comparable to like-minded countries with specific offences related to forced marriages.

These proposed amendments are designed to empower victims by giving them tools to prevent underage or forced marriages and by permitting them to clearly articulate to their family members or relatives forcing them to marry that this conduct is unacceptable in Canada and constitutes a crime.

I fully agree with the intentions of this Bill, and I sincerely hope that the Government will get the support of all Honourable Members so that people from all communities within Canada, have equal opportunities and the same right

s.21(1)(a)

s.21(1)(b)

SECRET

to choose whether to marry, when to marry and to whom
they marry.

Thank you.

Gauthier, Amy-Lyne

From: Assad, Michael
Sent: Thursday, March 12, 2015 2:10 PM
To: Assad, Michael; [REDACTED] Lafleur, Eric
Cc: * CPAU Group
Subject: RE: Bill S-7 - Additional Second Reading Speech for CIC
Attachments: RVSD S-7 (2015-03-12)_DMO Approved.docx

s.19(1)

Hi Michael,

Please find attached the same speech with slight revisions made in tracked changes.

Thanks,
Michael

From: Assad, Michael
Sent: 2015-Mar-12 9:15 AM
To: [REDACTED] Lafleur, Eric
Cc: * CPAU Group
Subject: Bill S-7 - Additional Second Reading Speech for CIC

Good morning,

Please find attached the additional (ninth) speech requested by CIC, as approved by DMO.

Please let us know when it is approved in order for us to share it with our counterparts at CIC.

Thank you,

Michael Assad
A/Deputy Director, Ministerial Secretariat & A/Chief, Cabinet and Parliamentary Affairs Unit /
Directeur Adjoint p.i. du secrétariat ministériel et chef p.i. de l'unité des affaires du Cabinet et parlementaires

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House of Commons

***Bill S-7: An Act to amend the Immigration and Refugee
Protection Act, the Civil Marriage Act and the Criminal Code
and to make consequential amendments to other Acts***

Second Reading

Provocation Defence and Racial Slurs

(10 Minutes)

March 2015

Mr. Speaker, it is my pleasure to participate in the second reading debate of Bill S-7, *An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts.*

This government takes the safety and well-being of Canadians, and particularly children, very seriously. We are firmly committed to protecting vulnerable Canadians from all types of violence and to holding perpetrators accountable for their acts.

Building on this commitment, Bill S-7 proposes important legislative measures to better prevent Canadians, in particular women and girls, from being victimized. For instance, changes to the *Civil Marriage Act* would set a new national minimum age for marriage at 16 years and firmly establish in federal legislation the existing requirements that

each party to a marriage enter into it with their “free and enlightened consent”.

Bill S-7 also proposes to amend the *Criminal Code* to make clear that anyone who actively participates in a marriage ceremony with full knowledge that one or both of the participants is under the age of 16 or is marrying against their will may be criminally liable. Behaviors which are aimed at ensuring that a marriage bond is created under these circumstances is both harmful and morally wrong. A clear legislative statement to this effect is one way of both educating the public and deterring the behaviour.

This Bill would also make it a crime for anyone to remove a child ordinarily resident in Canada from the country with the intent that the child be subjected to an underage or forced marriage abroad. It would also introduce a new peace bond in the *Criminal Code* which would be available where there

are reasonable grounds to fear that an underage or forced marriage will occur.

Bill S-7 would also bring much needed reform to the defence of provocation by limiting its application to circumstances where the victim's provoking conduct was itself a criminal wrong of some degree of seriousness. If a person kills in response to something said or done by the victim and the victim's conduct was lawful, the person who kills would no longer be able to benefit from the provocation defence.

During the debates so far, concerns have been expressed that the proposed reform would make the defence of provocation unavailable to those who are provoked to kill by a racial slur.

I would like to address these concerns in my remarks today. But before turning to the subject of "racial slurs", I would like

to remind Members that the defence of provocation is the original "honour defence" in the common law world.

From its original inception in England in the 1600s, it was a defence that reflected the cultural values of that place and time. Among other things, those values considered that when women married, they ceased to have any independent legal personality, and instead they became the property of their husbands.

According to those values, when a man was found having sexual relations with another man's wife, the courts considered it to be the "highest invasion of property" (*Mawgridge* (1707) 84 E.R. 1107). The man's honour and property were violated, and committing murder in response to the violation was considered to be less serious than other killings.

Today, although we strive for equality between men and women, the defence of provocation unfortunately retains some of these troubling aspects of its common law origins.

Let us not forget that everyone has the fundamental human right to choose with whom to be in a relationship. So why does the provocation defence continue to mitigate murder in the circumstances of relationship breakdown or infidelity? Do we really still uphold this cultural value in Canada in 2015? I believe it is time to update the defence to reflect today's values.

In terms of concerns over removing the provocation defence where the accused was provoked by racial slurs, the first thing to note is that there seem to be very few such cases reported. Thankfully, murder provoked by racial insult appears to be a very infrequent occurrence in Canada.

The facts and circumstances of the few cases that have been reported are very revealing. In the few cases that have come before the courts, the parties to the conflict typically know each other and have some kind of past relationship. Racial slurs are rarely the only form of provocation, and rarely is the victim the only one behaving in an insulting manner. Often, both parties are insulting each other, and sometimes also assaulting or threatening each other.

Intoxication also appears to be involved in these instances. In a number of cases, both parties were very drunk, making both insults and violent retaliation more likely.

In short, these are not situations in which a law abiding citizen is going about their affairs, minding their own business, only to be viciously insulted and demeaned with racist and inflammatory remarks by a complete stranger.

We can all agree that racial slurs are morally and socially unacceptable. However, they do not rise to the level of being criminal, unless they are intended to promote hatred and are made in a public place. Where these kinds of insults provoke someone to kill, it is almost always in the context of a private conversation in a private place, between people who know each other.

But let us also remember that the issue is not whether racial insults can understandably provoke an angry response such as a shove or punch, or even a severe beating or even physical.

The issue is whether a racial insult, or other kinds of insult, should mitigate culpability where a person becomes so angered that they deliberately kill another person.

It is important to note that some of the cases which involved provocation by racial insult involved spousal or intimate partner killings.

We must ensure that provocation by racial insult is not a pretext to mitigate culpability for a spousal killing that is really motivated by a man's loss of control over his partner and his family. Because the provocation defence can only be raised where a person is charged with murder, the victim is not present to defend against accusations that they made a racial insult. The accused need only raise a reasonable doubt that the insult was made; he does not need to prove it.

To those who are concerned about removing the defence of provocation where murder followed a racist insult, I urge them to be equally concerned about the fact that provocation is still sometimes successful where men kill their wives or intimate partners, often in the context of a relationship

breakdown, where a woman has done nothing wrong other than assert her right to make relationship choices for herself.

This is a longstanding problem noted with the provocation defence by academics and others, in Canada and abroad, for decades. Most similar jurisdictions have abolished or limited their provocation defence in part to prevent its use to mitigate spousal and intimate partner killings.

We must also recall that the provocation defence is not the only mechanism in our legal system for dealing with rare and truly extenuating killings. In genuinely sympathetic circumstances, nothing obliges the Crown to proceed to trial on a murder charge. The Crown has the discretion to accept a guilty plea to manslaughter, which is the same result that a successful provocation defence would produce.

In addition, given how these circumstances seem to play out, an accused is likely to have recourse to other defences beyond provocation, such as the claim that he lacked the intent to kill due to intoxication, diminished mental capacity or fear, or a combination of multiple factors. Provocation will still be available if there were threats uttered alongside any insults.

In closing, the proposed reform to the provocation defence is in keeping with the objective of the Bill, namely to protect all Canadians, but especially women and girls, from all forms of violence including those perpetrated by their families and those closest to them. I encourage all Members of the House to support Bill S-7.

Thank you.

Gauthier, Amy-Lyne

From: Gauthier, Amy-Lyne
Sent: Thursday, March 19, 2015 4:42 PM **s.19(1)**
To: [REDACTED]
Cc: CPAU Group
Subject: S-7 speeches
Attachments: speech #8 EFM need for reforms March 17 final 2015 SGC APP (2) (CPAU-DMO) (clean) (2015-03-19).docx; speech #7 Early marriage (10 mins) DG approved March 11 2015 revised march 17 final SGC APP (2)(CPAU-DMO) (clean) (2015-03-19).docx; speech #9 provocation 3 honour killing cases March 17 2015 SGC APP (2)(CPAU-DMO) (clean) (2015-03-19).docx; speech #10 overview march 17 (mb) SGC APP (2)(CPAU-DMO) (clean) (2015-03-19).docx

Here are 4 speeches for CIC.

Please advise if you will be sending directly to CIC MO or if I should send to my colleagues at PAU CIC.

Thanks,

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House of Commons

Bill S-7: An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts

Second Reading

**Early and forced marriage:
responses to critiques that there is no need for amendments
and that there will be unintended consequences of
criminalization**

(10 Minutes)

March 2015

Mr. Speaker, I am very pleased to rise today in support of Bill S-7, *An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts*. I'd like to take this opportunity to respond to some of the arguments that have been raised in opposition to Bill S-7.

Members of the opposition have claimed that Bill S-7 is unnecessary because the criminal law already covers early and forced marriages and is sufficient to respond to these heinous forms of violence. They also claim that these proposed amendments will have unintended consequences on victims because the proposals will criminalize early and forced marriage. Mr. Speaker, I have to admit to being somewhat confused. How can current criminal laws to address these practices be sufficient and fully supported

while proposed reforms to these laws critiqued for criminalizing these same practices?

Mr. Speaker, we've heard many Members in this House condemning these forms of gender-based violence as serious violations of women's and girls' human rights. We've heard about the serious harms inflicted upon women and girls forced to marry against their will. Mr. Speaker, this Government will not sit back when we know that women and girls in Canada are being forced into marriage or being taken abroad, sometimes under false pretenses of attending someone else's wedding, only to find that they are the ones getting married despite their lack of consent.

These are completely unacceptable practices; they are an affront to the values of this country, to freedom of choice, to the right to be protected from violence, and to the principle of gender equality. This Government is standing up for the

victims of these horrific forms of violence by ensuring that these victims, those that care about them, and law enforcement have all the tools they need to prevent these marriages from happening in the first place.

Are there already criminal offences to address aspects of early and forced marriages? Yes there are, Mr. Speaker. But there are also some significant gaps in the law. This Bill is all about filling those gaps to ensure that our already strong justice system responses are even more robust. This Bill provides a range of responses to these forms of violence that are specifically designed to prevent them from occurring.

Let me explain what these gaps are. Firstly, there is currently no criminal offence that addresses child or early marriage where force or threat of force was not used prior to the marriage. Some claim that the current criminal provisions

relating to the age of consent for sexual activity would address early marriage. Mr. Speaker this is simply inaccurate. The current *Criminal Code* provision that sets out the minimum age for sexual activity (s. 150.1), at 16 years, with exceptions for those who are close-in-age, has an explicit exception for married persons. In other words, right now a person who is under the age of 16 and is married to someone considerably older, is not covered by this protective provision.

Mr. Speaker, permit me to explain why this exemption for marriage currently exists. It exists because there is no national minimum age for marriage below which marriages are automatically illegal. Apart from the federal minimum age of 16 for marriages in Quebec, there is currently no federal legislation setting out the minimum age for marriage in the rest of Canada. As many of my colleagues have pointed out, this leaves the old federal common law to fill the void, which

is unclear but appears to set the minimum age at 14 for boys and 12 for girls.

It is therefore possible, Mr. Speaker, that a child under the age of 16 can currently be married in Canada, except in Quebec. It is also possible, on the basis of private international law rules, that a Canadian child under the age of 16 can be taken out of the country and married in a country where such child marriages are legally solemnized, and upon that child's return to Canada, the marriage is currently recognized as legally valid, except in Quebec. This is because there is no federal legislation that renders the child legally incapable of consenting to the marriage.

This Bill, Mr. Speaker, will address that gap. By introducing a national minimum age of 16, below which no child can legally consent to marriage, this Bill not only prohibits those underage marriages from taking place in Canada, it also has the effect of rendering underage marriages of Canadian

children abroad invalid because the child lacked the legal capacity to marry.

Moreover, Mr. Speaker, this Bill proposes to amend the *Criminal Code* provision related to the age of consent to sexual activity, by removing the exemption for married couples. Once Bill S-7 is passed, there will be no marriages of persons below the age of 16, and therefore there is no need for an exemption from sexual offences where one party is married to someone under 16. Provision is made for the short transition period after the coming into force of the Bill, to account for any marriages entered into just before the measures in Bill S-7 take effect.

The current gaps in the law related to early marriage are significant and warrant remedial legislative reform. Right now, Mr. Speaker, if a child under the age of 18 is about to be removed from Canada for an early or forced marriage, the

authorities cannot readily rely on the current *Criminal Code* provision that prohibits the removal of a child from the country for certain criminal offences. This is because the actual underage or forced marriage ceremony itself does not currently constitute a criminal offence and the provision in question does not refer to underage or forced marriage. Under the existing provisions, the authorities would need to be able to prove that a sexual or violent offence was intended to be committed abroad.

As a result, Mr. Speaker, we need to have anchoring offences in the *Criminal Code* that are founded on the harms associated with underage and forced marriages themselves, as distinct from the harm of physical or sexual violence.

That's why this Bill would amend the *Criminal Code* to make clear that anyone who actively participates in a marriage ceremony with full knowledge that one or both of the

participants is under the age of 16 or is marrying against their will, may be criminally liable.

These two new offences act as the touchstone for amendments to the provision related to the removal of child from Canada, so that the authorities will have the tools to stop someone from taking a child out of the country for an underage or forced marriage. These two new offences also act as the basis for the creation of a new peace bond designed to prevent underage and forced marriages from taking place without having to lay a criminal charge.

This speaks to the second gap in the current laws to address forced marriage; what I will refer to as the prevention gap.

This Government is aware that many victims of forced marriage are reluctant to see their family members criminally prosecuted. This is something we see in all forms of family violence – be it intimate partner violence, child abuse or elder

abuse. But that does not mean that we should set the clock back in time and treat violence in the home as a “private matter”. Absolutely not – an assault against a family member is as severe, sometimes even more harmful, than an assault against a stranger. What we do need, are more tools for victims to prevent these forms of violence from happening in the first place. That is exactly what this Bill does.

Mr. Speaker, these two new anchoring offences of underage and forced marriage were specifically designed so that victims can use the peace bonds to prevent these marriages from happening and so that the authorities can stop someone from removing a child from the country for these crimes. These are necessary tools to fill the gaps in the current law.

Finally, Mr. Speaker, I would like to point out that the objective of the criminal law is not solely to denounce and

punish perpetrators of crime but also to deter people from committing crimes and to help prevent them. The law is also there to educate. We have heard from victims who told us that if they had been able to tell their parents that forced marriage was a crime, they might have convinced their parents not to subject them to it.

I urge all my colleagues to join me in supporting this important Bill. Thank you Mr. Speaker.

House of Commons

***Bill S-7: An Act to amend the Immigration and Refugee
Protection Act, the Civil Marriage Act and the Criminal Code
and to make consequential amendments to other Acts***

Second Reading

Early and forced marriage

(10 Minutes)

March 2015

Mr. Speaker, it is my pleasure to participate in the second reading debate of Bill S-7, *An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts.*

I'm sure everyone in this room agrees that all people in Canada have the right to be free from violence and to reach their full potential. It is a sad reality, however, that there are people in Canada – principally women and girls – who are subjected to a forced or early marriage. Prior to or within these marriages, these victims experience various forms of violence and because of these marriages, they are hindered in their ability to fully and successfully participate in our free and democratic society.

I would like to take this opportunity to focus my remarks today on the specific issues of early and forced marriage.

An early marriage is a marriage that takes place before one or both individuals involved have reached the minimum legal age of marriage. International studies have shown that a girl married at an early age can face complications in pregnancy and childbirth, increased maternal mortality, domestic servitude as well as sexual and domestic violence. Girls are predominately the victims of a child marriage, increasing their risk of violence and creating a significant barrier to achieving gender equality as they are regularly forced to disrupt or abandon their education.

A forced marriage is considered to be a marriage which takes place without the free and enlightened consent of one or both individuals involved. As with early marriages, forced marriages are predominantly perpetrated by the victim's own family members. The consequences of a forced marriage are numerous, including repeated sexual violence, and possible

physical assault and domestic servitude. We have seen tragic cases in Canada and around the world, where individuals who have refused to enter into a marriage against their will, or who have left a forced marriage, have been brutally assaulted – even murdered – by their family members.

This government takes the safety and well-being of Canadians, and particularly children, very seriously and is firmly committed to protecting vulnerable Canadians from all types of violence and to holding perpetrators accountable for their acts.

Bill S-7 proposes important legislative measures to better prevent Canadians from being victimized by early and forced marriage. Changes to the *Civil Marriage Act* would set a new national minimum age for marriage at 16 years; formally entrench in federal law the existing requirements that each

party to a marriage enter into it with their “free and enlightened consent”; and that any previous marriage must be officially dissolved before a new marriage is entered into.

There is currently no national minimum age below which a marriage is legally invalid. Under the Constitution, setting the absolute minimum age for marriage is a matter of federal jurisdiction. Yet apart from federal legislation that sets a minimum age of 16 years for marriages in Quebec, the minimum age elsewhere in Canada is set out in the common law, or court decisions. Remarkably, this old common law sets the minimum age at 14 for boys and 12 for girls. It is time we modernized and set in legislation an absolute national minimum age of 16 for marriages in Canada.

Many have questioned why this bill proposes the absolute minimum age of 16 as opposed to 18 years. The short answer is that there can be exceptional circumstances where a

mature minor wishes to marry and has already engaged in a significant commitment with their partner, for instance, where they have a child in common. This approach is also consistent with the majority of like-minded countries that also have 16 as an absolute minimum age for marriage and 18 as the “free age” for marriage without any additional requirements for consent.

Between age 16 and the age of majority – either 18 or 19 depending on the jurisdiction – the provincial and territorial marriage acts provide additional safeguards to help protect young people from marriages that are not in their best interests. However, where the only protection afforded to the young person over 16 under provincial law is the requirement for parental consent, then we still face the potential problem of parents forcing their 16 or 17 year old child into a marriage.

In response to this concern, the Minister of Justice has engaged his provincial and territorial counterparts in discussions on possible changes to their Marriage Acts to require judicial oversight for all marriages under the age of majority. Nonetheless, even in the absence of additional safeguards in the Marriage Acts, the proposed new criminal offences related to forced and underage marriages contained in Bill S-7 will provide a comprehensive response to protect against early and forced marriage in Canada.

Bill S-7 proposes to amend the *Criminal Code* so that it would be a criminal offence for anyone solemnizing a marriage – whether they have legal authority to do so or not – who does so knowing that one of the parties being married is under the age of 16 years or is marrying against their will. Mr. Speaker, this is a pretty strong deterrent and it sends a clear message that solemnizing these marriages is not only illegal under the civil law but is also a crime.

To complement the underage marriage offences, Bill S-7 also amends the provisions in the *Criminal Code* that set out the minimum age for sexual activity (s. 150.1). As you will recall, in 2008 this government increased the minimum age of consent to sexual activities from 14 to 16 years, with exceptions for those who are close-in-age and where the parties were married. Because there was no national minimum age of marriage at the time, the exception for married couples was retained. I am proud to say that Bill S-7 will change that. Once this legislation is in force, it will be illegal to marry a person under the age of 16, which corresponds to the age of consent for sexual activity. There will no longer be a need for an exception where the victim is below the age of 16 and married to the accused.

This Bill would also amend the *Criminal Code* to make clear that anyone who actively participates in a marriage ceremony

with full knowledge that one or both of the participants is under the age of 16 or is marrying against their will, may be criminally liable. This will not apply to a person who is merely present at the ceremony, even if they know that a party to the marriage does not consent. In order to trigger the criminal offence, the individual must play an active role in ensuring that the ceremony takes place while knowing that it involves a child under the age of 16 or a person who is being forced to marry against their will.

Moreover, there have been cases of Canadian children being taken abroad to be married at an early age and forced into a marriage. This is simply unacceptable. This Bill would make it a crime for anyone to remove a child ordinarily resident in Canada from the country with the intent that the child be subjected to an underage or forced marriage abroad.

Finally, this Bill would introduce a new peace bond in the *Criminal Code* which would be available where there are reasonable grounds to fear that an underage or forced marriage will occur. The new peace bond would permit a court to impose conditions precluding the defendant from making arrangements related to the marriage of a potential victim, requiring him/her to surrender travel documents and preventing him/her from leaving the country with a potential victim.

In closing, this Bill will provide individuals, communities and criminal justice system authorities with the tools that are needed to tackle these issues. I encourage all Members of the House to support Bill S-7.

Thank you Mr. Speaker.

House of Commons

***Bill S-7: An Act to amend the Immigration and Refugee
Protection Act, the Civil Marriage Act and the Criminal Code
and to make consequential amendments to other Acts***

Second Reading

Provocation defence raised in three honour-killing cases

Speech #9 (10 Minutes)

March 2015

**Mr. Speaker, I am pleased to rise today to speak on Bill S-7,
*An Act to amend the Immigration and Refugee Protection
Act, the Civil Marriage Act and the Criminal Code and to
make consequential amendments to other Acts.***

**I would like to take this opportunity to address comments
that have been made in this and the other place suggesting
that the reform to the defence of provocation is unnecessary
in light of three cases where it was unsuccessfully raised in
so-called honour-killings.**

**The defence of provocation, sometimes known as the "heat
of passion" defence, applies only to a charge of murder, and
comes into play only if murder is actually proven. It does not
give rise to a complete acquittal, but rather produces a
verdict of manslaughter instead of murder.**

The defence offers significant benefits to an accused. A conviction for second degree murder carries a mandatory sentence of life in prison and strict parole ineligibility rules, whereas a manslaughter conviction carries no mandatory minimum sentence except if a firearm is used, and it allows a murderer to avoid the stigma associated with that label.

The defence will be successful where the murder was committed in response to a "wrongful act or insult" from the victim that would be sufficient to "deprive an ordinary person of the power of self-control", and where the accused acted suddenly "before there was time for his passion to cool." The killing must be a spontaneous reaction to an unexpected provocation.

Most honour-killings are believed to be premeditated. If the Crown can prove premeditation resulting in a conviction for

first degree murder, the defence of provocation will not succeed.

However, some killings that may be characterized as honour-killings can be spontaneous reactions to something unexpectedly said or done by the victim. In cases where the Crown prosecutor has proven that the killing was intentional but not premeditated, the provocation defence is available.

The defence of provocation has been raised in at least three cases that could be characterized as honour-killings. These are the cases of *R. v. Nahar*, [2004], *R. v. Humaid*, [2006] and *R. v. Sidiqi*, [2013]. All three of these reported cases were appealed to the appropriate Courts of Appeal – in the case of *Nahar*, to the British Columbia Court of Appeal, and the other two to the Ontario Court of Appeal.

It is true that in each of these cases, the defence of provocation failed. However, this cannot be taken to have the consequence that some have suggested, namely that the defence is now barred in an honour-killing context and that therefore there is no reason to amend the law.

As a general matter, even assuming that the Courts of Appeal determined conclusively that the provocation defence is unavailable in these circumstances, the relevant legal issues have arisen in only two provinces, British Columbia and Ontario. Rulings from one provincial Court of Appeal are not binding in any other province. Without a ruling on the relevant legal issues from the Supreme Court of Canada, it is simply incorrect to say that all legal questions have been definitively resolved in Canada.

When we come to the substance of what was actually decided by these Courts of Appeal, a careful reading of the

cases shows that the courts did not, as a matter of law, rule out the possibility of the defence operating in situations of honour killing.

The defence continues to be available to be raised in cases where family honour played a role in the killing. For instance, it would be available to an accused who upon finding his teenage daughter in her bedroom with a boy from school, becomes enraged at this breach of the family's honour code. If he intentionally kills her in the heat of the moment in response to her verbal insults against his cultural traditions and beliefs, he could benefit from a potentially successful defence of provocation.

In two of the cases, it was the defence that submitted evidence of the cultural background of the accused in order to demonstrate how the "wrongful act or insult" from the

victim would give the provocation significance and gravity to an ordinary person from the same culture as the accused.

For instance, in *Nahar*, the accused claimed that he killed his wife in the "heat of passion" following disrespectful comments from her about other men and behavior such as smoking, drinking and socializing with men. He introduced evidence that the victim's behavior was completely at odds with acceptable behaviour of wives in his culture.

The British Columbia Court of Appeal actually found this cultural context to be relevant to understanding how the "ordinary person" of the same background as the accused would be provoked by the behavior of the victim. This may come as a surprise to those who have tried to suggest that all three cases definitively rule out the provocation in an honour-killing context.

This provocation claim failed for different reasons. First, the trial judge had grounds to find that the alleged provocation by the victim was not unexpected to the accused, but rather had been going on for several months. In this regard, the killing was not "on the sudden" following an unexpected provocation. Second, the nature of the provocation by the victim was not found to be such as to cause an ordinary person to lose their self-control, even assuming the ordinary person was from the accused's cultural community.

In the *Humaid* case, the accused alleged that he was provoked by a comment his wife made that he interpreted to be an admission of sexual infidelity. The accused led expert opinion evidence that in the accused's cultural tradition, infidelity by a female member of a family was considered a very serious violation of the family's honour and worthy of harsh punishment by the male members of the family. The Court of Appeal expressed a strong view that the application

of cultural values that are contrary to gender equality to the defence of provocation was inappropriate, but this was not the reason that the defence failed. One reason the defence failed was that the accused did not introduce any evidence that he personally shared the views that his community was said to have. It also failed because the Crown had proven premeditation, which is inconsistent with the provocation defence. The views of the Court on the question of cultural values were not matters that were necessary to decide the appeal, are so they are not binding on lower courts.

Finally, in *Sadiqi* the accused raised the defence of provocation in the killing of his sister and her fiancé by alleging that his sister had refused to seek their father's approval for a proposed wedding and that she and her fiancé insulted him in the moments before the murders. The Crown tendered expert evidence of the phenomenon of honour killings within the traditional culture of the country of origin

of the accused. The jury found the accused guilty of first degree murder. The appeal was about whether the Crown's use of expert evidence was appropriate, which the Court of Appeal held that it was. That is the only legal proposition that this case stands for.

In sum, despite some helpful discussion of gender equality in these cases, none of the rulings established as a matter of law that the defence is excluded in honour-killing cases. It remains available to be argued by any person accused of murder. The provocation claims failed in these three cases because of the facts and evidence presented, and not because of any principle of law. Taken together, these cases reflect outcomes that all Canadians would hope for. But it is purely wishful thinking to say that these cases legally close the door on the provocation defence in honour-killing contexts.

Moreover, there is a long history of the provocation defence being raised and sometimes accepted to excuse spousal murders in Canada in circumstances that closely resemble the *Nahar* and *Humaid* cases. The principal difference is that the feelings of dishonour and shame are experienced at the family or community level in the case of honour-killings, and at the personal or private level in the case of spousal killings. What is the same is that men kill women when they feel they have lost control over them.

A number of Canadian academics have pointed to the contradictions between the honour-killing cases and other spousal killings involving provocation. They note that the Courts are very good at rejecting the defence where the accused is from some minority sub-culture, but that when the accused is from the mainstream Canadian culture, the Courts often fail to see how the defence operates in a gendered way to excuse the murders of women.

It is high time we amended this defence so that it can no longer mitigate killings in response to a lawful "insult". No person has a right to control another, and where they fail to get what they want they should not have their murder of that other person mitigated through a 500 year old defence that originated in a culture that treated women as the property of their husbands. This reform is about reaffirming the value of gender equality in Canada and making it clear that homicidal violence against all women in reaction to lawful conduct will no longer provide an excuse for murder.

Bill S-7 proposes to address this longstanding problem in our criminal law by limiting the defence so that it could only be raised where the provoking conduct by the victim amounts to an offence punishable by 5 years in prison or more.

Where a parent comes upon a person kidnapping or sexually abusing their child, and they kill after the threat is stopped, the provocation defence may be available. Where a person is the victim of other types of crime, such as an assault or a house-break, the defence may still be available. But it is high time that we stop excusing murder that is prompted by unpleasant yet lawful insults. I urge all Members to support this important Bill.

Thank you Mr. Speaker.

House of Commons

Bill S-7: An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts

Second Reading

General Overview

Speech # 10 (10 Minutes)

March 2015

Mr. Speaker, I am pleased to have the opportunity today to speak on Bill S-7, *An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts*. I believe that it is very important to take a strong stance to ensure that no young girl or woman in Canada becomes a victim of any cruel practice that violates basic human rights. These practices are not acceptable in Canadian society and Bill S-7 sends this as a clear message to all Canadians and to those coming to Canada.

Bill S-7 strengthens the laws in Canada through amendments to the *Immigration and Refugee Protection Act*, the *Civil Marriage Act* and the *Criminal Code*. I am pleased to elaborate on the important measures contained in this Bill.

This Bill addresses early and forced marriage, deplorable practices that most often victimize young women and are

often carried out by their own parents or other family members.

To protect our most vulnerable in society – our children – from early marriages, the Bill will establish a national minimum age of 16 for marriage in the *Civil Marriage Act*. Currently, a minimum age of 16 for marriage exists only in federal legislation pertaining to Quebec. It has never been legislated for the rest of Canada and as a result, the common law applies, which is usually interpreted as a minimum age of 14 for boys and 12 for girls. This Bill would now set 16 as the minimum age for marriage across Canada, consistent with current practices in countries such as the United Kingdom, Australia and New Zealand.

The *Civil Marriage Act* will also be amended to codify the legal requirement for free and enlightened consent to

marriage. This is critical to protect basic human rights.

Consent must be the cornerstone of a lawful marriage.

Furthering Canadian values is a key aspect of Bill S-7.

Amendments to the *Criminal Code* are proposed to provide protections against early or forced marriage, prevent victims from being removed from Canada, and also effectively punish perpetrators for violating Canadian laws.

There are already a range of *Criminal Code* provisions which can be applied in forced marriage cases; for example, when a person is threatened, assaulted or forcibly confined in an attempt to force them into getting married. However, the proposed amendments in Bill S-7 are very important because they create offences that specifically address the social harm caused by the public sanctioning of these harmful practices.

The Bill proposes two new offences that would extend criminal liability to anyone who knowingly celebrates, aids or participates in a marriage ceremony where one or both of the spouses is either under the age of 16 or is marrying against their will. This would cover both those who conduct the marriage ceremony, and those, such as family members, who have full knowledge that a marriage is forced or involves a child under 16 and actively aid the marriage ceremony to take place. This would include, for example, transporting an unwilling bride to the ceremony or acting as a legal witness.

It is important to note that a person cannot be prosecuted for merely being at the scene of a crime and witnessing it. A person would need to have engaged in some conduct specifically directed toward helping an early or forced marriage to occur.

The Bill also proposes to make it an offence to remove a child from Canada for the purposes of a forced or underage marriage outside the country. This would address the very disturbing stories of Canadian children being taken abroad for a forced or early marriage. They are told that they are going overseas to a relative's wedding, only to discover upon arrival that the wedding ceremony is, in fact, their own.

There is currently a provision in the *Criminal Code* that makes it a crime to take steps to remove a child ordinarily resident in Canada from the country with the intent that the child be subject to a listed offence. The existing listed offences are primarily sexual offences but include offences of violence. This Bill would add the new offences related to an underage or forced marriage ceremony to the list of offences in the provision that makes it a crime to remove a child from Canada.

These *Criminal Code* amendments provide the foundation for the very important prevention measures in Bill S-7 to protect vulnerable Canadians and residents from early and forced marriages. The Bill proposes to introduce specific forced or underage marriage peace bonds. Peace bonds, which are preventative court orders, currently exist in the *Criminal Code* and are available in circumstances where a person fears on reasonable grounds that another person will cause them personal injury or will commit certain types of offences. Amendments would provide courts with the power to impose conditions on an individual when there are reasonable grounds to fear that a forced marriage or a marriage under the age of 16 will otherwise occur. For example, an order under the new peace bond provision could prevent a victim from being taken out of Canada and require the surrender of a passport.

These peace bonds are an important option available to victims of forced marriages who might be reluctant to contact the authorities prior to the marriage because they do not want their parents or other relatives prosecuted. An individual subject to a peace bond is not charged with a criminal offence unless they breach the peace bond.

Another important measure in Bill S-7 proposes to amend the *Criminal Code* to limit the defence of provocation so it will not be available in "honour" based killings or many spousal homicide cases. The defence of provocation can currently be raised by a person who is found to have committed murder on the basis that a "wrongful act or insult" by the victim was sufficient to deprive an ordinary person of the power of self-control, causing them to act suddenly before there was time for their passions to cool. If successful, even though the person is found to have committed murder, they are instead convicted of manslaughter.

The defence has been successfully invoked in spousal homicides of women in response to conduct of the victim that was entirely legal, including where the victim was simply trying to end the relationship or had said something that their killer found insulting, as well as in cases of real or perceived infidelity. The provocation defence has also been raised in several so-called "honour" killing cases in Canada though, to date, it has not been successful in this particular type of murder case.

This Bill proposes to restrict the application of the defence of provocation so that it would no longer be available to those who intentionally kill another person in response to conduct that was legal. It will only be available where the victim's conduct amounted to a relatively serious criminal offence.

It is an important amendment because as a society we need to send a clear signal that murder should not be excused because the killer was insulted, embarrassed or suffered other emotional upset. The strongest penalties should be imposed for murder committed because a person was unable to control the actions and decisions of another person.

Finally, Bill S-7 addresses polygamy and reinforces the message that it is a practice that is an affront to Canadian values. Amendments to the *Immigration and Refugee Protection Act* would specify that a permanent resident or foreign national is inadmissible on the grounds of practising polygamy in Canada. It would allow for the removal of non-citizens who practise polygamy in Canada without the need for a *Criminal Code* conviction.

I am very proud that this Government is sending a strong message to Canadian society and to the world that Canada will not tolerate barbaric cultural practices.

I encourage all Members to give Bill S-7 their full support.

Thank you.

DRAFT

House of Commons

Bill S-7: An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts

Second Reading

Criminal Code amendments – forced marriage

Speech # 4 (10 Minutes)

January 2015

**Mr. Speaker, thank you for the opportunity to speak
on Bill S-7, *An Act to amend the Immigration and Refugee
Protection Act, the Civil Marriage Act and the Criminal Code
and to make consequential amendments to other Acts.***

**The Government has repeatedly demonstrated its
commitment to making Canadian communities safer for
everyone, including by taking action to prevent and address
violence against women and girls.**

**There is increasing evidence that Canadians are being
subjected to forced marriages. The Government has
provided international assistance to individuals, including
Canadian children, who were taken abroad for a forced
marriage. While forced marriage can affect men and boys, it
is predominantly a form of gender-based violence targeting
women and girls. It is clear that more need to be done to**

tackle these unacceptable practices – practices which may violate basic human rights, cause harm to the victims and create barriers to the full participation of women in our free and democratic society. These forms of gender-based violence are being addressed by Bill S-7.

Bill S-7 contains important legislative measures which would protect potential and actual victims of forced marriage.

These measures would also provide protections against other harmful practices which predominately and adversely affect women and girls, such as polygamy and so-called “honour”-based violence.

In short, Bill S-7 proposes to set the absolute minimum age of marriage at 16 in the *Civil Marriage Act*, and entrench in that same *Act* the requirements that a marriage involve free and enlightened consent and that all previous marriages be dissolved prior to entering into a new marriage.

While most of the actions that are usually taken to force someone into a marriage are already covered by Canadian criminal law, including assault, forcible confinement and sexual assault, Bill S-7 introduces changes to the *Criminal Code* to also criminalize active participation in an underage or forced marriage ceremony, and removing a child from Canada for these same harmful purposes. This Bill also expands the peace bond regime in the *Criminal Code* to provide for a new peace bond which could be ordered by the court to prevent an early or forced marriage from taking place in Canada or prevent a child from being taken out of the country to be forced into a marriage.

Another important change to the *Criminal Code* proposed in this Bill is to limit the defence of provocation so that it could not be raised in cases involving so-called "honour" killings and in many spousal homicides, where the alleged

provocation can often consist of verbal or other types of insults. While verbal insults may be unwelcome, they are not illegal behavior, and adults should not be able to use insults to justify murder.

Finally, this Bill puts forward important changes to the *Immigration and Refugee Protection Act* which would specify that a permanent resident or foreign national is inadmissible to Canada if they are or will be practicing polygamy in the country, adding to the current provisions that prohibit the practice of polygamy in Canada.

I would like to focus my remaining remarks on the proposed amendments to the *Criminal Code* that would help prevent forced marriages from occurring in Canada or with Canadians taken abroad.

In some of the media coverage and debates related to

Bill S-7, there appear to be a number of misconceptions about the provisions in the Bill related to forced marriage, which I would like to address.

The first misconception is that the Bill bans individuals in a forced marriage from immigrating to Canada. Let me be very clear, the only immigration-related reform proposed in this Bill relates to the introduction of a new inadmissibility in relation to the practice of polygamy.

As regards forced marriage, this Bill proposes to codify the requirement for free and enlightened consent to marriage in the *Civil Marriage Act* and to introduce additional measures in the *Criminal Code* to prevent forced marriages from occurring and to sanction those that would harm another by forcing them into a marriage.

The second misunderstanding that I would like to address relates to the scope of the proposed criminal offence of participating in a forced marriage ceremony. The proposed offence would not criminalize mere passive attendance by a community member or relative at a forced marriage ceremony. Canadian criminal law does not impose liability on persons for merely witnessing wrongdoing and failing to stop it. An individual who is merely "at the scene" without any active conduct that is specifically directed toward helping the marriage ceremony occur, will not be subject to prosecution. The law requires active participation in the ceremony, such as acting as a signatory witness, driving an unwilling bride to the ceremony or restraining that individual so that they do not flee.

Moreover, this active participation has to be coupled with actual knowledge that one of the parties to the marriage is marrying against their will. Mere suspicion or speculation

that the marriage is forced would be insufficient to trigger criminal liability.

The third myth that I wish to dispel relates to concern that the victim of a forced marriage would be forced to criminalize their family members. This Government has heard the concerns expressed by some victims that, although they do not want to be forced into marriage, they also do not wish to see their loved ones criminally prosecuted. For this reason, the Bill is structured specifically to provide victims with a means of preventing a forced marriage from occurring in the first place through a process that does not involve a criminal prosecution. That process would be a new and targeted peace bond.

Peace bonds are preventative court orders contained in the *Criminal Code*. When a person is subject to a peace bond, they have not committed a crime, and so will not have a

criminal record unless they choose to violate the court order. As a result, the Bill would make it possible for a victim to get the protection she or he requires to prevent the forced marriage ceremony from happening without having to criminalize family members. The peace bond process would also not require the child to take an application to court, as the application is usually made by a police officer on behalf of the person who is afraid.

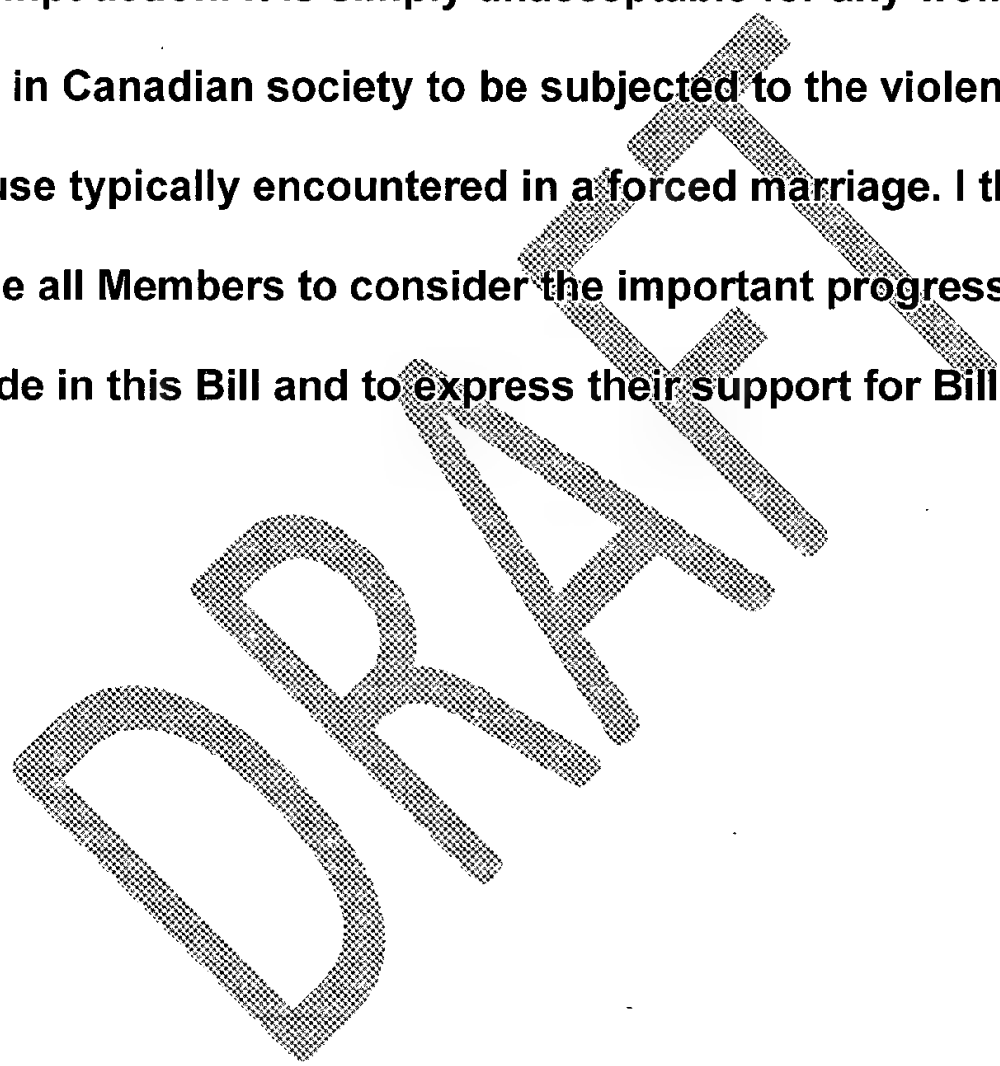
Finally, I would like to address one last misunderstanding related to the forced marriage provisions in this Bill. Some have claimed that this new offence is unnecessary, as the current criminal law is sufficient to address the use of force to make someone marry against their will. While it is indeed true that much of the conduct employed to force someone into a marriage is already covered by one or more of the existing criminal offences – such as assault or unlawful

confinement – this Bill fills a gap in the law specifically with the goal of preventing forced marriages from happening.

For example, currently, child protection officials are often unable to intervene to prevent a child from being removed from the country to protect them from a forced marriage abroad, because the marriage itself is not a crime under the law. This new offence makes it clear that celebrating or assisting at an unwanted marriage within which sexual offences are expected to occur, is in itself a crime, as it is a violation of the basic human rights of the individual to choose whether and to whom they will marry. Consequently, attempts to force someone into a marriage against their will or remove a child from Canada for a forced marriage, would now be sufficient to warrant the imposition of a peace bond.

It is this Government's priority to put an end to the victimization of Canadians, notably women and girls from

vulnerable segments of society. The legislative measures proposed in this Bill are a sincere attempt to address and prevent specific forms of gender-based violence that require prompt action. It is simply unacceptable for any woman or girl in Canadian society to be subjected to the violence and abuse typically encountered in a forced marriage. I therefore urge all Members to consider the important progress being made in this Bill and to express their support for Bill S-7.



House of Commons

Bill S-7: An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts

Second Reading

Peace bonds

Speech # 3 (10 Minutes)

January 2015

Mr. Speaker, I am grateful to have the opportunity to speak today on Bill S-7, *An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts.*

Bill S-7 introduces important legislative measures which would protect potential and actual victims of early and forced marriage. These measures would also provide protections against other harmful practices and forms of violence which predominately and adversely affect women and girls, such as polygamy and so-called "honour"-based violence. Bill S-7 proposes to set the absolute minimum age of marriage at 16 in the *Civil Marriage Act*, and codify in that same *Act* the requirements that a marriage involve free and enlightened consent and that all previous marriages be dissolved prior to entering into a new marriage.

This Bill also introduces changes to the *Criminal Code* to criminalize active participation in an underage or forced marriage, and criminalize removing a child from Canada for these same harmful purposes. Moreover, Bill S-7 expands the peace bond regime in the *Criminal Code* to provide for a new court order designed to prevent an underage or forced marriage from taking place in Canada or prevent a child from being taken out of the country to be forced into a marriage.

In addition, Bill S-7 proposes to limit the defence of provocation in the *Criminal Code* so that it could not be raised in cases involving so-called "honour" killings and in many spousal homicides, where the alleged provocation often consists of verbal or offensive but otherwise lawful behaviour.

Finally, this Bill puts forward important changes to the *Immigration and Refugee Protection Act* which would specify that a permanent resident or foreign national is inadmissible if they practise polygamy in Canada.

I would like to focus my remarks today on the proposed forced and early marriage peace bond provisions of the Bill. The prevention of violence has been a key aspect of the Government's action on violence against women and girls. Expanding the peace bond regime in the *Criminal Code*, by way of the proposed amendments in Bill S-7, is consistent with these important efforts.

Peace bonds are preventative court orders under the *Criminal Code* which require a person to agree to specific conditions to keep the peace. A peace bond does not require a finding of guilt or result in a criminal conviction unless the

conditions of the peace bond are proved to have been breached.

When a peace bond is issued, the Court imposes a mandatory condition to keep the peace and be of good behaviour, and may also impose any other reasonable condition necessary to ensure the good conduct of the offender.

The new peace bond provides guidance to the court in the types of optional conditions that may be imposed. Some of these are the same as other peace bonds in the *Criminal Code*, – for instance, no contact or communication with a person who fears for their safety – while others have been designed for the types of circumstances that would specifically assist in preventing a forced marriage:

- preventing the defendant from leaving the jurisdiction of the court;
- preventing the defendant from making plans or arrangements related to the underage or forced marriage, such as booking a wedding venue or plane tickets to leave the country for the ceremony;
- requiring the defendant to surrender passports or other travel documents to the court; and
- requiring the defendant to participate in a treatment program that includes family violence counselling.

The proposed peace bond can last for a period of up to one year and up to two years if the defendant was previously convicted of a forced or early marriage offence. Subsequent

peace bonds can be taken out on behalf of the victim should the threat of an early or forced marriage persist.

The new peace bond would play an important role with respect to those victims who may be reluctant to engage the authorities because they do not want their family members prosecuted. In some cases, family members may be otherwise law-abiding individuals and their actions are simply misguided and not intended to be harmful. The availability of a peace bond would encourage potential victims to seek out the support of the criminal justice system without fear of criminally prosecuting family members.

However, peace bonds are enforceable through the threat of a criminal sanction. A violation of the terms of the peace bond is an offence under section 811 punishable by a maximum two-year prison sentence. Bill C-26, the *Tougher Penalties for Child Predators Act*, proposed to increase the

maximum penalties for breaching a peace bond to four year's imprisonment on indictment.

The proposed forced marriage peace bond provisions in the *Criminal Code* are similar to the highly successful civil forced marriage protection orders available in the United Kingdom (UK). Apart from the fact that the UK forced marriage protection orders are civil, while the proposed forced marriage peace bonds in Bill S-7 are under the *Criminal Code*, they are otherwise alike in the many respects, for instance:

- both are preventative court orders that do not constitute a criminal charge;
- both are available by way of an emergency application on behalf of the victim, and conditions can be applied against the defendant prior to a hearing on the merits;

- both require a hearing before a court; and
- both rely upon a civil standard of evidence (balance of probabilities), as opposed to a criminal one (beyond a reasonable doubt).

It should be noted that any individual may make the application, including the victim, relatives or any other person. The victim is not required to apply for the peace bond themselves. In many cases, it would be expected that a police officer would swear the information against the defendant, although a child protection or victim service worker may do so as well.

Some have asked why this Government has not introduced civil forced marriage protection orders instead of peace bonds. The answer is fairly straight forward. In Canada, civil

family violence protection orders generally fall under provincial jurisdiction, whereas the *Criminal Code* is federal.

Civil family violence protection orders are dependent on applicable provincial legislation. They are not available in all provinces and do not specifically address forced marriage. Bill S-7 proposes to use the jurisdiction of the criminal law to act for the protection of all vulnerable Canadians.

Moreover, protection orders stemming from the *Criminal Code* are more likely to be available to frontline police officers through databases such as the Canadian Police Information Centre (CPIC), which facilitates the enforcement of these orders and are more easily accessible for Canadian Border Services Agents to prevent the removal of a person from Canada for a forced or underage marriage.

Some have also questioned why these proposed peace bonds can be ordered against young people between 12 and 18 years of age. This is consistent with the current availability of general peace bonds. In addition, studies on forced marriage indicate that multiple family members can take part in the use of force for the purpose of compelling a person to marry against their will, including siblings and cousins under the age of 18. Moreover, having the forced marriage peace bonds available for youth provides police and prosecutors with additional alternatives to charging the youth with an offence related to forced marriage such as assault, uttering threats or forcible confinement.

Based on the experience in the UK with their civil forced marriage protection orders, it is expected that the new forced marriage peace bond would not only encourage the reporting of potential early and forced marriage cases but also deter family members and other possible perpetrators from

carrying out these harmful and utterly unacceptable practices.

I hope that all Members appreciate the importance of this Bill.

I encourage all Members to give Bill S-7 their full support.

DRAFT

House of Commons

Bill S-7: An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts

Second Reading

**Provocation Defence:
Operation of the defence, purposes of the reform, honour-killings and spousal killings**

Speech # 1 (10 Minutes)

January 2015

Mr. Speaker, I am pleased to have the opportunity today to speak on Bill S-7, *An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts.*

In the Speech from the Throne in October 2013, our Government promised that it would ensure that early and forced marriage and other harmful cultural practices, such as polygamous marriages and so-called "honour"-based violence, do not occur on Canadian soil.

This Bill amends the *Immigration and Refugee Protection Act*, the *Civil Marriage Act* and the *Criminal Code* in a variety of ways to address these practices. For instance, Bill S-7 would create new and specific offences in the *Criminal Code* related to participation in a forced or early marriage

ceremony, including taking steps to remove a minor from Canada for the purpose of such a ceremony abroad, and a targeted peace bond that can be used preventively, before the marriage and its associated harms occurs.

Today I would like to speak about the proposed amendment to the *Criminal Code* that would limit the scope of the provocation defence.

During the debates and committee proceedings in the Senate, there appeared to be a number of misconceptions about the merits of the existing law and the reasons for the proposed law reform. I hope to clarify some of these matters today.

The defence of provocation is sometimes known as the "heat of passion" defence. The defence applies only to a charge of murder, and comes into play only if murder is actually

proved. It is a partial defence, which means that where it is successful, it does not give rise to a complete acquittal, but rather produces a verdict of manslaughter instead of murder.

The defence will be successful where the murder was committed in response to a "wrongful act or insult" from the victim that would be sufficient to "deprive an ordinary person of the power of self-control", and where the accused acted suddenly "before there was time for his passion to cool."

Although the defence is only partial, it provides two very significant benefits to an accused. First, a conviction for manslaughter, as opposed to murder, leaves the judge with wide sentencing discretion. Whereas a conviction for second degree murder carries a mandatory sentence of life in prison and strict parole ineligibility rules, a manslaughter conviction carries no mandatory minimum sentence except if a firearm is used, in which case the mandatory minimum sentence is a

minimum of 4 years. In all other circumstances, manslaughter carries no minimum sentence. At the sentencing stage following a successful provocation plea, the provoking conduct of the victim is taken into account again as a mitigating factor that can reduce the sentence that is imposed for manslaughter. As Members can see, the sentencing benefit provided by the provocation defence is indeed substantial.

The second benefit of the defence is that it allows a murderer to avoid the stigma associated with that label. In this regard, the defence stands as a societal justification or excuse for some murders over others, on the basis of something that the victim said or did, including, as I will describe, entirely lawful conduct. It is this aspect that we need as legislators to keep in mind when reviewing this provision; the law treats some killings as less blameworthy than others, and effectively says that murder isn't always murder.

Under the current law, which has been in the *Criminal Code* since 1892, to constitute provocation, the victim's conduct need only be "a wrongful act or insult." If the victim had a "legal right" to do what they did, this cannot be provocation. However, this exclusion is very narrow and only applies to conduct that is expressly legally authorized, such as a police officer executing a search warrant.

Provocation is permitted where the victim's conduct was lawful. The defence is in fact frequently raised where the alleged provocation was lawful conduct such as verbal insults or offensive gestures.

The proposed amendment would limit provocation so that it could only be raised where the alleged provoking conduct by the victim would amount to an offence punishable by 5 years in prison or more.

The defence would therefore still be available in cases where a person kills in the heat of passion provoked by criminal offences such as an assault, verbal threats, criminal harassment, theft or fraud of property over \$5000, extortion, and many others. Many provocation claims are in fact based on alleged provocation of a criminal nature.

The kinds of conduct that would no longer be treated as provocation would be verbal insults or other types of offensive, but lawful, behaviour. However unpleasant or hurtful an insult may be, if it is lawful conduct, it should not excuse or mitigate murder. In the debates in that other place, some suggested that this proposed reform goes too far and limits the defence too much. Canadians can and should be expected to control their reactions to verbal insults and offensive gestures other than by killing.

There are two primary objectives of this proposed reform.

The first is to prevent the defence from being raised in future honour-killing cases, possibly successfully. Young girls and women are sometimes killed because they refuse to follow their parents' wishes, for instance about dating or marriage partners, or how to dress or engage with society, and instead make their own choices, which is a fundamental freedom of everyone in Canada.

The defence has been raised so far in at least 3 murder prosecutions where the murder could be characterized as "honour-based". The defence failed in all three cases, which some have cited as proof that the law is working perfectly and does not need amending.

This is an overly optimistic view. For one thing, all three cases were appealed on complex questions of law and evidence, including how the defence should or should not

incorporate evidence of the accused's culture. These issues are not yet definitively resolved by the courts. Despite some discussion of gender equality in a few of these cases, none of the rulings established as a matter of law that the defence is excluded in honour-killing cases. It remains available to be argued by any person accused of murder.

Imagine a situation where a teenage girl does not wish to marry the person chosen for her by her parents, but in refusing their wishes she verbally insults their cultural heritage, community and beliefs. If one or both parents react on the sudden and kill the child, the defence could be raised and could potentially be successful.

A second objective of the proposed reform is to modernize the defence with respect to violence against women overall, so that it can no longer be used to excuse spousal murders resulting from the offender's violent reaction to the victim's

lawful conduct. There is a long history of the provocation defence being raised and sometimes accepted to excuse spousal murders in Canada, most disturbingly in the context of marriage breakdown.

These cases have not gone unnoticed. As one academic has noted in her review of the honour-killing provocation cases, "while it may be true that gender equality is, at a rhetorical level, a fundamental Canadian value and that violence against women is neither accepted nor encouraged in Canadian society, the operation of the defence of provocation in the criminal courts is certainly not exemplary of either of those values".

[Rosemary Cairns Way, Culture, Religion and the Ordinary Person: An Essay on *R. v. Humaid*, 41 Ottawa L. Rev. 1 2009-2010]

Canadian judges and juries have accepted the defence where men murdered their current or former spouses, or their

former spouses' new partners, in response to other forms of lawful conduct such as: verbal insults; questioning paternity; refusal to talk privately following termination of a relationship; and real or perceived infidelity.

These cases are very similar to the "honour-killing" cases in that women are killed because husbands – or other family members – reacted violently when they failed to control her behaviour. Women and girls are still seen as the property of their husbands or their families, with their aspirations and desires subjected to the will of others "for their own good." The principal difference is that the feelings of dishonour and shame are experienced at the family or community level in the case of honour-killings, and at the personal or private level in the case of spousal killings.

Those who respond with violence to insult or offense – or to a family member's exercise of their right to autonomy –

**cannot be excused from responsibility where they
intentionally kill; they deserve to wear the label of the crime
they commit, murder, and suffer the penalty associated with
that crime.**

I urge all Members to support this important Bill.

DRAFT

Racial slurs – Provocation

General

The difficulties associated with identifying relevant cases should be re-emphasized: A prosecutor can accept a guilty plea to manslaughter on the basis of alleged provocation, and this would not produce a court record linking the manslaughter conviction to provoking conduct by the victim. Similarly, provocation is sometimes raised by the defence along with other defences – such as intoxication – or in combination with an argument that the accused lacked the mental state for murder. Either of these arguments can also lead to a conviction for manslaughter instead of murder just as provocation does, yet because a jury's verdict does not disclose the legal reason for the manslaughter conviction, it is not possible to know from the verdict alone whether provocation was the basis for the verdict. Finally, there are cases where the defence is raised but is not considered by the jury or the judge because there is not enough evidence for its invocation. As trial judgments – even where the judge presides in the absence of a jury – do not always produce written reasons in the absence of a legal issue that requires consideration, there would be no judicial record of the number of cases in which a provocation defence was raised but rejected.

Of the few identified reported cases, the dynamics of situations where provocation is raised due to racial insults leading to killing share many of the same features:

- Racial slurs are often accompanied by other types of insults
- Racial slurs are usually accompanied by threats or actual violence (i.e. not verbal insult alone)
- Usually both victim and accused are insulting, threatening each other (i.e. the accused is also behaving badly toward the victim before the killing)
- Intoxication by all parties is often involved
- Sometimes mental illness is involved

The dynamics presented above, which appear to be fairly typical in these cases, raise several other possibilities for an accused to obtain a manslaughter conviction without raising provocation:

- Significant intoxication and impaired thinking due to mental illness can both individually negate intent to kill, thereby leading to a conviction for manslaughter (as opposed to murder) without the need to invoke the provocation defence; and
- Intoxication, mental illness, fear, excitement, in combination with each other (any two or more factors), can also negate intent to kill leading to a conviction for manslaughter, without the need to invoke the provocation defence.

None of these manners of arriving at a manslaughter conviction will be affected by the reforms proposed in Bill S-7. Provocation will still be available in response to unlawful conduct such as assaults and verbal threats, which often accompany provoked killings.

Cases

A search for relevant cases identified fewer than 10 cases. Of these cases, the defence of provocation was:

- not applied in 1 case because intoxication was found to negate intent for murder so the provocation defence was not needed (Ottertail, 2013);
- accepted (or probably accepted) in at least 3 cases –
 - one case involved an extremely brutal spousal killing in the context of a marriage breakdown (Klimovich, 2013): the Court of appeal found some ambiguity in the jury's verdict on whether they found the accused had not committed murder, or that he did commit murder but the murder was provoked; there was no description of the "racial slur" available; for sentencing purposes, the Court found the murder to be intentional and found that the manslaughter verdict would most likely be based on provocation; the Court found the murder especially brutal and found it to be highly aggravating that it was committed in the context of the accused's loss of control over his family life; it found the provocation was of little mitigating value on sentencing;
 - one case in which a man strangled a 19 year-old woman with whom he lived (probably in some type of romantic relationship) (Chouaiby, 1994); the Crown disputed that any insult had been made, as the accused did not mention any insult to a psychiatrist he saw after the killing (there is no information from the court record about the nature of the "racial" insult);
 - one case where a man killed his friend after several hours in which they and others were drinking significantly (Gethiga, 2007); the victim used the word "nigger" several times as well as "pussy" and "bitch" – the accused said "I am not a bitch" when he collected the knife used to kill the victim, so it may be more likely that the "gendered" insults provoked the killing rather than the "racial" insult.
- accepted in one case where legally the defence should have failed due to a 30 minute interval between insult and killing (i.e. the killing could not be "on the sudden"); in this case the accused was an elderly black man who grew up in the United States, and he shot his neighbour in the head at close range in front of her children due to racial insult; both victim and accused had been insulting each other for a year since they were neighbours; after killing the victim, the accused threatened to shoot his common law wife (Davis, 2000);
- rejected in at least one case, most likely because the killing was not "sudden" after the provocation, i.e. happened more than a few minutes after the killing (Merasty, 1999).

Cases can be provided upon request.



Protected
2015-002380

Talking Points Provocation Defence – Racial slurs

IF ASKED ABOUT THE APPLICATION OF THE PROVOCATION DEFENCE WHERE THE PROVOCATION IS RACIAL SLURS

- **There seem to be very few reported cases in which a racial slur was alleged to be provocation within the meaning of the provocation defence. Thankfully, murder provoked by racial insult appears to be a very infrequent occurrence in Canada.**
- **In the few cases that have come before the courts, racial slurs are generally accompanied by threats or actual violence, and often both parties to the conflict are insulting or threatening each other.**
- **Intoxication also appears to be involved in these instances.**
- **These cases have not involved situations where one person is viciously insulted and demeaned while minding their own business.**
- **Racial slurs are morally and socially unacceptable. However, they are not unlawful.**
- **The issue when it comes to the defence of provocation, is not whether racial insults may understandably provoke an angry response, a shove or punch, or even a severe beating. The issue is**

whether a racial insult, and other kinds of insults, should mitigate culpability for what is found to be an intentional killing.

- **In our Government's view, they should not, and Bill S-7 would limit the defence of provocation accordingly.**
- **Wherever the circumstances are truly extenuating and sympathetic, the Crown can accept a guilty plea to manslaughter without any need for the accused to raise the provocation defence.**

DRAFT

House of Commons

Bill S-7: An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts

Second Reading

Canada's Leadership – Domestic and International Considerations

Speech # 2 (revised)

(8 Minutes)

March 2015

I am pleased to have the opportunity today to speak on Bill S-7, regarding Canada's commitment to preventing and responding to early and forced marriage and other barbaric cultural practices, both at home and abroad.

I am proud to say that Canada has made ending child, early and forced marriage an international development and foreign policy priority. For example, in October 2013, Canada announced \$5 million in new money to address the causes and consequences of early and forced marriage around the world. These funds were used for programs in Afghanistan, Ethiopia, Ghana, Somalia, and Zimbabwe.

More recently, in July 2014, the Minister of Foreign Affairs announced that Canada is contributing \$20 million over two years to UNICEF toward ending child, early and forced marriage. The UNICEF project aims to accelerate the

movement to end child marriage in Bangladesh, Burkina Faso, Ethiopia, Ghana, Yemen and Zambia by supporting efforts in these countries to strengthen both programming and political support to end the practice.

Canada has also played an important role in bringing world attention and action to this issue of child, early and forced marriage through actions such as spearheading the initiative to establish the International Day of the Girl Child and co-leading with Zambia a United General Assembly resolution on child, early and forced marriage.

Similarly, Canada contributes to efforts to combat female genital mutilation (FGM) by working with UN agencies, and bilaterally with other countries supporting projects to address violence against women and eliminate harmful cultural practices like FGM.

These barbaric practices predominantly affect women and girls and impair their rights and ability to fully participate in society. Equality of men and women under the law is a fundamental Canadian value that shapes Canadian policy and actions both in the international and the domestic arenas.

Free and healthy societies require the full participation of women. Sadly, in many countries around the world, millions of women and girls continue to be prevented from full participation by violence, including through the inhumane practices of early and forced marriage. It is both the reality and the strength of our country that Canadians of very different origins live and work side by side, together. New Canadians work hard to learn our languages, our values, and our traditions, and in turn, are welcomed as equal members of the Canadian family. The languages, cultures and traditions of new Canadians add to the diversity of Canada

which enriches our lives. At the same time, harmful cultural practices which go against Canadian values, and are in violation of Canada's international human rights commitments, will not be tolerated in Canada.

This Government is aware of cases of Canadian children being taken abroad for an early or forced marriage and has concerns that girls who are from countries where the practice of female genital mutilation is common, may be at risk. Canada is committed to protecting and defending those who are vulnerable to these practices, both domestically and internationally.

This Government has demonstrated its leadership in this area by introducing this Bill, and also by continuing to work with our international partners and community members to find ways to end such harmful practices which tragically are happening each and every day around the world.

Bill S-7 will strengthen Canadian marriage laws by establishing a new national minimum age for marriage of 16 years old.

Currently, only in Quebec is the minimum age of marriage 16 years. This is because specific federal laws apply only in Quebec but in other parts of Canada, the common law applies. This Bill will now set 16 as the minimum age for marriage across Canada.

Some may query why this Bill has not raised the minimum age to marry to 18. The approach in this Bill seeks to balance protections for children against flexibility to reflect the choices of mature minors between the ages of 16 and 18 who make a commitment to one another, such as those who have a child together. It also aligns with the approaches taken in other like-minded countries, as I have previously mentioned.

Bill S-7 also contains measures that would amend the *Criminal Code* to criminalize certain conduct related to underage and forced marriage ceremonies by knowingly officiating, or knowingly and actively participating, at an underage or forced marriage.

For example, these offences will apply to individuals who engage in conduct specifically intended to facilitate the marriage ceremony – such as acting as a legal witness – knowing that one of the parties is under the age of 16 or marrying against their will. These proposed new offences would be punishable by a maximum of five years imprisonment.

Proposed amendments will also criminalize removing a minor from Canada for a forced or underage marriage. This is done by adding the new offences in relation to underage

and forced marriage to the existing offence of removing a child from Canada to commit female genital mutilation or sexual offences. This offence is punishable by a maximum of five years imprisonment and Bill S-7 maintains this penalty.

Countries such as Australia and Norway have similar criminal measures which Canada has looked to in the development of this Bill.

Other proposed amendments in this Bill are prevention measures that would provide courts with the authority to issue peace bonds and conditions on an individual when there are reasonable grounds to believe that a forced marriage or an underage marriage will otherwise occur. As part of the conditions that would be available, a court could order a defendant to avoid making any plans or arrangements for a marriage, whether inside or outside Canada, to surrender travel documents, or to participate in a family violence counselling program. The creation of specific

forced or underage marriage peace bonds to prevent someone from being taken abroad for the purposes of early or forced marriage are similar to forced marriage civil protection orders in the United Kingdom.

In addition, Bill S-7 will amend the *Criminal Code* to ensure that the defence of “provocation” won’t apply in so-called “honour” killings and many spousal homicides. Currently, any conduct by the victim – including insults and other forms of offensive behaviour that are lawful – can potentially qualify as provocation if it is found to be sufficient to cause an ordinary person to lose self-control, the accused was not expecting it and the killing was sudden.

The proposed amendment would limit the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family “honour” or reputation,

cannot excuse murder; only conduct by the victim that amounts to a relatively serious criminal offence (i.e. an offence under the *Criminal Code* punishable by at least 5 years in prison) could be argued to be "provocation" for the purposes of the defence.

The provocation defence has either been abolished or restricted in almost every common law jurisdiction like Canada, such as most Australian states, New Zealand and the United Kingdom.

Finally, to better prevent polygamy from occurring on Canadian soil, Bill S-7 will create a new ground of inadmissibility for practicing polygamy in the *Immigration and Refugee Protection Act*.

A criminal conviction or finding of misrepresentation is currently required before polygamists can be found inadmissible. This Bill would make amendments to the IRPA so that a polygamist permanent resident or foreign national who is or will be physically present in Canada with any of their spouses would be considered to be practising polygamy in Canada. The permanent resident or foreign national could be found inadmissible *on that basis alone*, without requiring evidence that the person misrepresented their situation or has a criminal conviction.

I have discussed some of the very important aspects of this Bill, which sends a strong message that Canada condemns barbaric cultural practices not only domestically but internationally as well. Canada has and will continue to be seen as an international leader on these important human rights issues.

**I hope that the Government will get the support of all
Honourable Members in protecting victims, predominately
women and girls, from such intolerable and inhumane
practices.**

Thank you.

DRAFT

House of Commons

Bill S-7: An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts

Second Reading

**Provocation Defence: History of defence,
foreign law reform and battered women**

Speech # 11 (8 Minutes)

March 2015

Mr. Speaker, I am pleased to have the opportunity today to speak on Bill S-7, *An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts.*

The Speech from the Throne in October 2013, committed to ensuring that early and forced marriage and other harmful cultural practices, such as polygamous marriages and so-called "honour" based violence, do not occur on Canadian soil. Bill S-7 aims to do just this by bringing various amendments to the *Civil Marriage Act*, the *Immigration and Refugee Protection Act*, and the *Criminal Code*.

Today, I would like to speak to the proposed amendment to the *Criminal Code* defence of provocation. The provocation defence applies only to a murder charge, and when

successful, it reduces a murder down to manslaughter, thereby giving rise to wide judicial discretion in sentencing, and in most cases, to significantly lower sentences than if the person had been convicted of murder.

The proposed amendment would modernize the defence so that it only applies where the person killed as a result of having been provoked by conduct that was objectively serious, namely where it would amount to a criminal offence with a maximum sentence of at least 5 years. The defence will still be available where a person loses control and kills someone who has just sexually abused their child or their loved one, or who has assaulted or stolen something valuable from them. It would be available where a person is provoked by most criminal offences.

Today, the defence can be raised even where the victim's provoking conduct was a lawful insult or some other form of

offensive behaviour. The reform would limit the defence so that it no longer excuses murder where the provoking conduct of the victim was lawful.

Unfortunately, at least three persons charged with murder in cases that were characterized as honour-killings have tried to raise the defence, alleging that the victim provoked the killing by doing lawful things. In one case, the victim was said to have provoked the killing by insulting her father and refusing to seek his blessing for her wedding. In another case, the victim was said to have provoked her killing because she was smoking, drinking and talking with men who were not her husband. Fortunately, in these three cases, the defence failed.

Countless other men have raised the defence where they killed their wives or their former intimate partners, often in response to conduct by the victim that was lawful, such as

termination of the relationship, wanting an abortion, and verbal insults such as questioning a man's paternity or his sexual abilities. Many commentators have noted how the defence of provocation in these cases operates to excuse male violence against women and to re-affirm men's beliefs that they are entitled to control women.

The question for us as legislators is whether modern Canadian values do in fact support showing compassion and leniency to those who kill in response to something they find insulting, offensive or harmful to their sense of honour, but which is otherwise lawful. I believe they do not.

In considering this proposal, it is also very important to understand the history of the provocation defence and the experiences of other countries which share our common law tradition.

Historically, the defence of provocation emerged in the common law probably in the 16th century. Initially it was limited to certain categories of conduct related to men defending their honour, such as in a spontaneous fight or a duel, but also included finding another man committing adultery with their wife.

In the early common law, a man's wife was his legal property. The early provocation defence reflected the social and legal reality of the day, namely that adultery was "the highest invasion of property" (*Mawgridge* (1707) 84 E.R. 1107) and a man who killed in response to adultery was considered less blameworthy. It may surprise some to learn that in the history of our own common law tradition, the provocation defence was the original "honour defence".

At some point in its history, the honour-related basis for provocation was replaced with the idea that the law should

make some allowance for “human frailty” where a person is provoked beyond the ability to exercise self-control. The specific categories of provoking conduct were eliminated, and the provocation defence was made available more generally and broadly, where a person killed after having lost self-control as a result of any kind of “wrongful act or insult” by the victim, so long as an “ordinary person” could also have been provoked to lose their self-control in the same circumstances, though not necessarily to the point of killing.

This is the form of the provocation defence that was incorporated into Canadian law in the 1800s, and it remains unchanged today.

However, freedom of expression is a cornerstone of a free and democratic society. There is no room to make allowances for intentional killings on the basis of insult or offence. In my view, allowing the provocation defence to be

invoked in response to mere insults or offensive conduct is inconsistent with core Canadian values of freedom of expression, liberty and gender equality.

Both internationally and domestically, the provocation defence has been the subject of similar criticisms from a range of quarters in recent years. Even the Supreme Court of Canada has referred to these criticisms in some of its rulings, stating that only Parliament can address these concerns.

Many continue to criticize the defence, pointing out that its historical origins are still infused throughout its application today. Provocation still operates to excuse male proprietary or possessory claims over women, which is at odds with our modern values of gender equality and personal autonomy and freedom.

In the past decade, the legislatures of most jurisdictions with a similar common law history have acted to address some of the concerns. New Zealand and several Australian states have entirely abolished the defence. Most other Australian states have restricted the defence in some manner, as has the United Kingdom.

Just last year, the Australian state of New South Wales reformed its provocation defence, including by limiting its scope to provoking conduct that would be a relatively serious criminal offence. This is the approach proposed in Bill S-7.

Another question that was asked in the Senate was whether the proposed amendment would have the unintended consequence of taking a viable defence away from battered women who kill their abusers.

This is another misperception. In Canada, the provocation defence is rarely raised in these circumstances. According to the relevant research, battered women do not typically kill “in the heat of passion” and “on the sudden” as the defence of provocation requires. These aspects of the provocation defence limit its application to battered women.

Most battered women who are charged with murder in Canada raise self-defence. They usually kill to protect themselves. Parliament recently simplified the law of self-defence in the *Citizen's Arrest and Self-defence Act*, which came into force in 2013. The reformulated defence of self-defence now makes explicit reference to certain factors that are relevant where a battered spouse is being prosecuted. Some jurisdictions have amended their provocation defence to make it apply to battered women who kill, in particular by relaxing the requirement that the killing be done “on the sudden” after the provocation. This was not done in Canada,

which further helps to explain why the defence is rarely raised by battered women.

It should be remembered that the provocation defence would still be available to anyone who kills on the sudden in response to provoking conduct that is a relatively serious criminal offence. Under the proposed reform, a battered woman, or anyone else, could still raise the defence if they kill in response to having been assaulted or threatened, or otherwise victimized in the criminal sense.

The time has come for Canada to bring our law of provocation out of the 17th century and to align it with our modern values, as other like-minded nations have done. Our women and girls deserve nothing less.

I hope that all Members will support this proposal and all other elements of Bill S-7.

**Pages 217 to / à 220
are withheld pursuant to section
sont retenues en vertu de l'article**

21(1)(a)

**of the Access to Information Act
de la Loi sur l'accès à l'information**

**Responses to letter from Minister of Justice Canada (Sept. 9, 2014) encouraging PTs to
amend their marriage acts to require judicial consent for marriages between age 16 and
age of majority**

Province/territory	Date of response	Position
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November 4, 2014

s.13(1)(c)

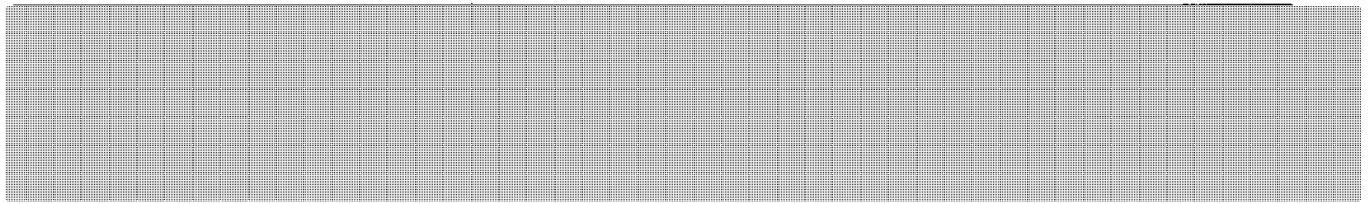
s.14

**Responses to letter from Minister of Justice Canada (Sept. 9, 2014) encouraging PTs to
amend their marriage acts to require judicial consent for marriages between age 16 and
age of majority**

Province/territory	Date of response	Position
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s.13(1)(c)

s.14



November 13, 2014

s.13(1)(c)

s.14

**Responses to letter from Minister of Justice Canada (Sept. 9, 2014) encouraging PTs to
amend their marriage acts to require judicial consent for marriages between age 16 and
age of majority**

Province/territory	Date of response	Position
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s.13(1)(c)

s.14



December 15, 2014

s.13(1)(c)

s.14



Department of Justice
Canada

Ministère de la Justice
Canada

MEMORANDUM / NOTE DE SERVICE

Security classification – Cote de sécurité
File Number – Numéro de dossier
Date (Y-A / M / D-J) 2015-01-19
Telephone / Fax – Téléphone / Télécopieur

TO / DEST. : Scott Nesbitt, Senior Counsel, Deputy Minister's Office

FROM / ORIG. : Amy-Lyne Gauthier, Counsel, Cabinet and Parliamentary Affairs
Unit

SUBJECT / OBJET : Bill S-7 (Early and Forced Marriage)

Scott,



Thank you!

s.21(1)(a)

**Pages 227 to / à 230
are withheld pursuant to section
sont retenues en vertu de l'article**

21(1)(a)

**of the Access to Information Act
de la Loi sur l'accès à l'information**



**PARLIAMENTARY AFFAIRS
UNIT**

Date date MO - Date d'échéance: 01/01/2010

ISSUE - 2008

[illegible]

RETURN TO - RETOURNER À

Name	Room - Pièce
Michael Assad	4256

JUS 786 (2010/08)

Canada

Carson, Derek

From:	Assad, Michael	s.19(1)
Sent:	2014-Dec-02 4:59 PM	s.21(1)(a)
To:	[REDACTED] Lafleur, Eric; [REDACTED]	s.23
Cc:	* CPAU Group	
Subject:	Bill S-7 - Response to Request	

Bonjour Francois,

Further to your request today, please find below the DMO-approved response:



Merci,

Michael Assad
Senior Analyst / Analyste principal
Cabinet and Parliamentary Affairs Unit / Unité des affaires du Cabinet et parlementaires

Ministerial Secretariat / Secrétariat ministériel
Justice Canada

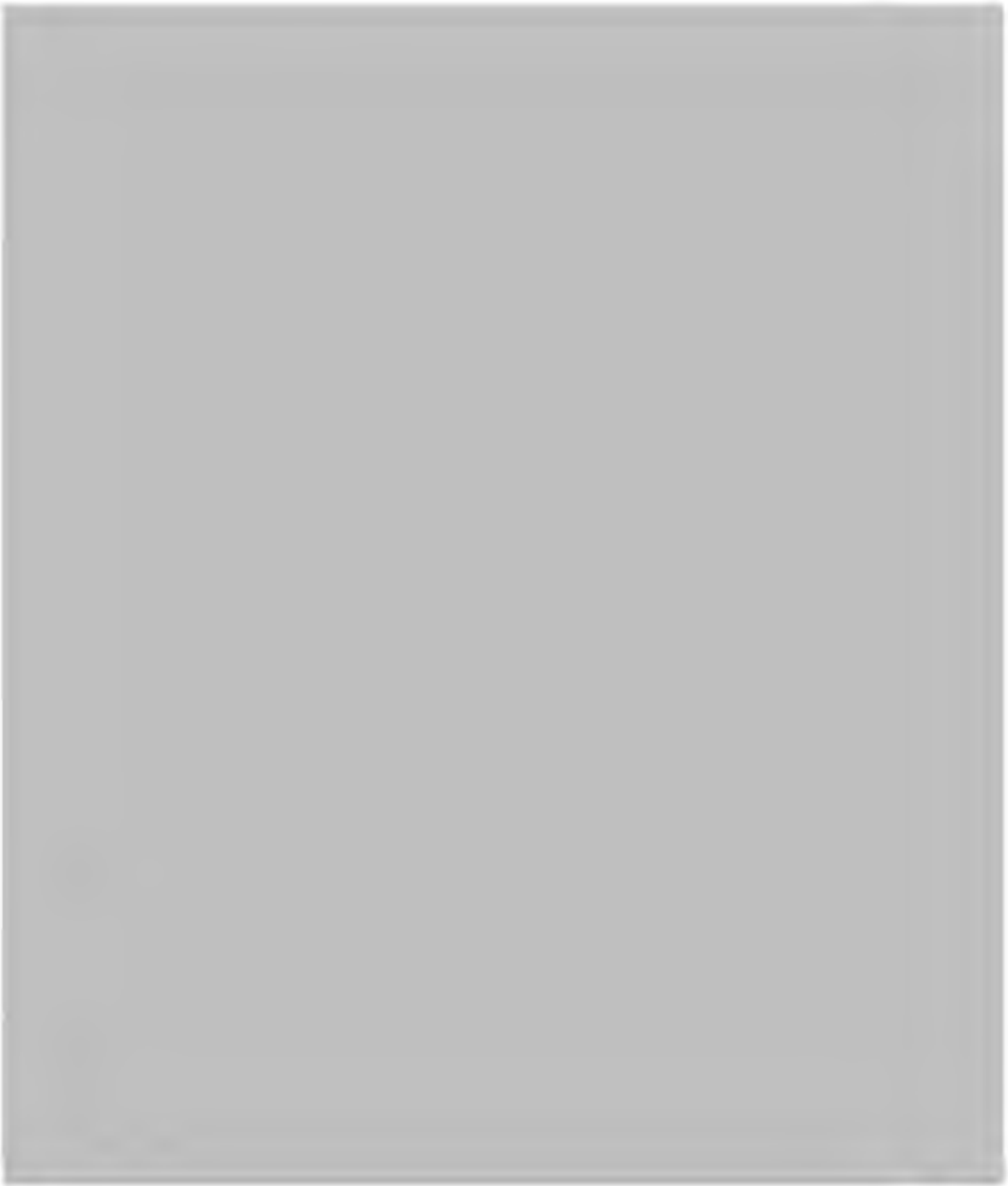
284 Wellington, room / pièce 4256
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Protected "B"

s.21(1)(a)

Canadian Stakeholders
Forced Marriage and "Honour" Based Violence



**Pages 235 to / à 241
are withheld pursuant to sections
sont retenues en vertu des articles**

19(1), 21(1)(a)

**of the Access to Information Act
de la Loi sur l'accès à l'information**

Protected "B"

Department of Justice Canada
Response to recommendations from UNICEF Canada on Bill S-7

Recommendation 1:

That children and young people be exempt from the measures set out in the proposed new sections 293.1 and 293.2 to the *Criminal Code*, and the proposed amendments to subsection 14(2) of the *Youth Criminal Justice Act*.

Response:

Youth under the age of 18 are subject to a separate regime in relation to charging, criminal procedure, sentencing, rehabilitation and reintegration that takes into consideration their vulnerability. The age of criminal responsibility in Canada is 12 (section 13 *Criminal Code*) and unless an express rule applies, anyone over that age is subject to the criminal law. However, youth aged 12 to 17 who are accused of a criminal offence are subject to distinct legal principles, protections and outcomes pursuant to the *Youth Criminal Justice Act* (YCJA). The YCJA provides that the youth criminal justice system must be separate from the adult system, and it is based on the principle that youth are presumed to be less morally blameworthy than adults. The law recognizes that youth must be held accountable, but in a way that takes into account their greater dependency and reduced level of maturity.

It is important to note that the YCJA requires police officers to consider using alternatives to charging or "extrajudicial measures" in all cases of youth offending. Under the Act, extrajudicial measures are presumed to be adequate to hold young persons accountable in circumstances where it is a first-time, non-violent offence.

While the proposed offences are designed to protect children and vulnerable persons from harm, there is a possibility that they may be committed by youth. Studies on forced marriage indicate that multiple family members can take part in the use of force for the purpose of compelling a person to marry against their will. Siblings may be tasked by their parents with the job of enforcing or assisting with the enforcement of the marriage. Excluding youth from the ambit of these offences might result in parents' increased reliance on their minor children to force another child into an unwanted marriage, and may fail to hold accountable individuals whose conduct is blameworthy and which directly contributes to the victimization of another.

Proposed offence of participation in a forced marriage ceremony

A young person merely attending the wedding ceremony would not be captured by the offence even if they knew the marriage was forced. With respect to the proposed offence of participation in a forced marriage ceremony, every person who aids or participates in a ceremony knowing that a person being married does not consent could be subject to prosecution. However, mere passive presence or attendance at such a marriage would not be culpable, based on existing jurisprudence applicable to these concepts in other contexts (specifically, the context of party liability provisions under section 21 of the *Criminal Code*). Some deliberate, active conduct would be required that is aimed at facilitating the ceremony, such as being an official witness or transporting an unwilling person to the ceremony.

Protected "B"

Charging and prosecuting

A young person subject to a forced marriage is the victim of the crime, and therefore would not be prosecuted. If the victim is below the age for child protection within their jurisdiction, child protection authorities would also be contacted.

As for a young person who knowingly and actively participates or aids the forced marriage ceremony of another person, they could be charged with the proposed offence. However, as noted above, the *Youth Criminal Justice Act* requires police officers to consider using alternatives to charging or "extrajudicial measures" in all cases of youth offending. If extrajudicial measures are deemed to be inappropriate, charges may be laid. Whether charges proceed to trial will be based on the prosecutor's assessment of the public interest and whether there is a reasonable prospect of conviction in each individual case.

Young person acting under duress

A young person who knowingly and actively participates in the forced marriage ceremony may be able to raise the defence of duress. If the legal criteria for the statutory or common law defence of duress are met, the defence could be relevant in a forced marriage ceremony situation involving an accused youth. Duress provides a complete defence to a crime. It requires a person who committed an offence to have done so as a result of threats of serious bodily harm or death, where the threats were made to get them to commit the specific offence they committed; having a generalized fear of one's father, for instance, would not be sufficient. Duress also requires that the person have "no legal way out" of the situation other than committing the offence.

Proposed peace bond

The application of the availability of the proposed forced marriage peace bonds to youth is consistent with the current availability of general peace bonds. Subsection 14(2) of the YCJA provides jurisdiction to a youth justice court to make orders under the *Criminal Code* recognizance provisions, except where the recognizance could have an adverse impact on youth. Therefore the YCJA specifies that *Criminal Code* sections 810, 810.01, and 810.2 apply, while excluding section 810.1. The latter could have the effect of prohibiting a young person from attending places where persons under the age of 16 could be expected to be present, as well as at a daycare centre, school ground or playground, and therefore is not provided for in the YCJA. The proposed new peace bond provision (section 810.02) is similar to the existing section 810 provision, which is currently included in subsection 14(2) of the YCJA. The purpose of the specific peace bond is to point to the forced or underage ceremony as a form of personal injury offence that would be covered to permit the issuance of these protective and preventive orders. Moreover, having the forced marriage peace bonds available for youth provides police and prosecutors with additional alternatives to charging the youth with an offence related to forced marriage.

Protected "B"

Recommendation 2:

That law enforcement authorities consult with child protection specialists (e.g., child welfare agencies or appropriate community based services) prior to initiating a legal process involving criminal law sanctions in order to identify and provide less intrusive alternatives to protect and support the child(ren) and restore or preserve their familial relations.

Response:

This recommendation is directed towards agencies that are under provincial jurisdiction, with the exception of law enforcement authorities in the territories. Nonetheless, the Department of Justice Canada has organised seven sector-specific training workshops on forced marriage, including with front-line workers, shelter workers and child protection officials. The Department has also presented on the issue to the Directors of Child Welfare and to counsel working in child protection in order to highlight risks associated with these forms of child abuse.

Recommendation 3:

That Canada take all due legal and administrative measures to ensure the unfettered access across borders by a child or children to a parent from whom they have been separated in the context of immigration – such as where a parent dissolves a polygamous union for the purpose of emigration to Canada and leaves a child or children behind in the country of origin.

Response:

This recommendation is directed towards Citizenship and Immigration Canada.

Summary of points and arguments that relate to Bill S-7 in the *Report on the Practice of Forced Marriage in Canada (2008)* by Naïma Bendriss

The following points were raised in the report that have been responded to through Bill S-7 (the italicized portion sets out how Bill S-7 relates to the points raised):

- Canada has given little attention to the question of forced marriages. There is no specific approach to deal with forced marriage. *(Bill S-7 provides a legal framework to respond to forced marriages)*
- Service providers interviewed for this report, indicated that it is the government's duty to address the problem of forced marriage and to protect those who are threatened with it or are already its victims. They expressed hope that government will enact legislation and regulations to counter this practice and take effective steps to make communities aware of the problems forced marriage causes. *(The proposed legislative amendments can serve as a basis for further awareness raising and outreach with community groups)*
- Many women who are threatened with or have been in a forced marriage are unaware of their rights. *(The proposed legislative amendments can serve as a basis for further awareness raising)*
- A forced marital relationship has profound physical, psychological and emotional effects on its victims. It hinders personal growth and fulfilment. In addition to violating rights to personal freedom, the practice is a barrier to the education and empowerment of young girls. *(The harm associated with a forced marriage is recognized in the proposed offence of active participation in a forced marriage ceremony)*
- There have been incidents of forced marriage where the victim was forced into a polygamous marriage. *(Bill S-7 address both the harms of forced and polygamous marriages)*
- In some communities in which honour is considered to be extremely important, marriage is the institution in which family honour is most strongly invested. It is through marriage that a person's and family's social standing is maintained. Parents sometimes use a whole range of pressure tactics, from surveillance to emotional blackmail and death threats to achieve their goal of marrying their child to someone they chose for them, disregarding their child's wishes. *(Bill S-7 also addresses so-called "honour" killings by proposing to restrict the application of the defence of provocation)*

Recommendations in the report not directly addressed by Bill S-7 (the italicized portion identifies other ways that the Government of Canada is responding to these recommendations):

- The government should earmark funds to create education programs, produce work tools and provide training for field workers. *(A recent Justice Canada call for proposals on forced marriage has resulted in funding of \$474,964 over the next three years for four*

projects related to awareness raising, risk assessments tool and training for front-line workers)

- There should be a national awareness and prevention campaign to inform people about this problem, including information pamphlets and posters. *(The proposed legislative amendments in Bill S-7 can serve as a basis for further awareness raising)*
- Mechanisms such as shelters and telephone helplines should be created to help people dealing with forced marriage. *(Justice Canada held a workshop on forced marriage with shelter workers in 2013, however funding for shelters is a matter of provincial jurisdiction)*
- More funding is needed for counselling services for forced marriage victims. *(This is a matter of provincial jurisdiction)*
- An information kit on forced marriage should be produced for teachers and students. *(Education falls under provincial jurisdiction)*
- Legal information sessions should be offered for parents and youth stressing that forced marriage is contrary to the law and infringes human rights as well as women's rights. *(Information about forced marriage is included in the revised Justice Canada "Abuse is Wrong in any Language" brochure (2012) that is available in 12 languages and used by newcomer services across the country)*
- Forced marriage victims should be able to annul their marriage without any time limit and without placing the burden of proof on them. *(This is a matter of provincial jurisdiction)*
- Value judgments should be avoided about the communities where the practice exists. *(Justice Canada has worked with the RCMP to develop on-line training for police on forced marriage and "honour" - based violence which contains clear messaging about the importance of not negatively stigmatizing minority communities)*

Forced Marriage: International Conventions and Declarations Recognized by Canada:

1. *Universal Declaration of Human Rights*¹

Article 16 (2) Marriage shall be entered into only with the free and full consent of the intending spouses.

2. *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*²

Article 16(1) States Parties....shall ensure, on a basis of equality of men and women:

(a) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

Article 16(2) The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

3. *Convention on the Rights of the Child (CRC)*³

While early forced marriage is not referred to in the CRC, child marriage is frequently addressed by the CRC Committee in their Concluding Observations for States Parties.

4. *International Covenant on Civil and Political Rights (ICCPR)*⁴

Article 23(3) No marriage shall be entered into without the free and full consent of the intending spouses.

5. *International Covenant on Economic, Social and Cultural Rights (ICESCR)*⁵

Article 10(1)...Marriage must be entered into with the free consent of the intending spouses.

6. *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*⁶

Article 1 Each of the States Parties to this Convention shall ... bring about ... the complete abolition or abandonment of the following institutions and practices ... :

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

¹ Adopted by the United Nations General Assembly in 1948.

² Entered into force in 1981; ratified by Canada in 1981.

³ Entered into force in 1990; ratified by Canada in 1991.

⁴ Entered into force in 1976; acceded to by Canada in 1976.

⁵ Entered into force in 1976; acceded to by Canada in 1976.

⁶ Entered into force in 1957; ratified by Canada in 1963.

(iii) A woman on the death of her husband is liable to be inherited by another person;
Article 2 With a view to bringing to an end the institutions and practices mentioned in article 1 (c) of this Convention, the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.

Canada has not acceded to the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*⁷

Article 1(1) No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.

(2) Notwithstanding anything in paragraph 1 above, it shall not be necessary for one of the parties to be present when the competent authority is satisfied that the circumstances are exceptional and that the party has, before a competent authority and in such manner as may be prescribed by law, expressed and not withdrawn consent.

Article 2 States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

⁷ Entered into force 1964.

September 26, 2014

CLAUSE BY CLAUSE OF BILL

An Act to Amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts.

Clause	Existing Legislation	Proposed Legislation	Explanation
1	Short title of the Bill: Zero Tolerance for Barbaric Cultural Practices Act		
2	<p><i>Immigration and Refugee Protection Act</i> (S.C. 2001, c. 27)</p> <p>N/A</p>	<p>2. The <i>Immigration and Refugee Protection Act</i> is amended by adding the following after section 41:</p> <p>41.1 (1) A permanent resident or a foreign national is inadmissible on grounds of practising polygamy if they are or will be practising polygamy with a person who is or will be physically present in Canada at the same time as the permanent resident or foreign national.</p> <p>(2) For the purposes of subsection (1), polygamy shall be interpreted in a manner consistent with paragraph 293(1)(a) of the <i>Criminal Code</i>.</p>	<p>This clause amends the <i>Immigration and Refugee Protection Act</i> (IRPA) to introduce a new provision (section 41.1) that will create a new ground of inadmissibility for both foreign nationals and permanent residents who practice polygamy in Canada. This new provision allows for a temporary or permanent resident found to be practising polygamy with one or more persons in Canada to be determined inadmissible and subject to removal proceedings without a criminal conviction or finding of misrepresentation.</p> <p>Similar to other inadmissibilities that apply to foreign nationals and permanent residents, visa applications could be refused on this ground. Inland, a foreign national or permanent resident could be reported and directed to an inadmissibility hearing and issued a removal order if they are found to be practising polygamy in Canada. There would be a right to appeal to the Immigration and Appeal Division of the Immigration and Refugee Board from a removal order made against a person on this ground in accordance with section 63 of the IRPA.</p>
3	<i>Civil Marriage Act</i> (S.C. 2005, c. 33)	3. The <i>Civil Marriage Act</i> is amended by adding the	This clause amends the <i>Civil Marriage Act</i> to codify nationally the existing legal requirement for free and

September 26, 2014

Clause	Existing Legislation	Proposed Legislation	Explanation
	N/A	<p>following after section 2:</p> <p>2.1 Marriage requires the free and enlightened consent of two persons to be the spouse of each other.</p> <p>2.2 No person who is under the age of 16 years shall contract marriage.</p> <p>2.3 No person shall contract a new marriage until every previous marriage has been dissolved by death or by divorce or declared to be null.</p>	<p>enlightened consent to marriage (new section 2.1). This requirement is currently contained in the <i>Federal Law—Civil Law Harmonization Act, No. 1</i> at section 5, with regard to the Province of Quebec only, and in the common law (court decisions) for residents of other provinces and territories.</p> <p>The new section 2.2 introduces a new national minimum age of 16 for marriage, below which no marriage can be contracted. This minimum age is currently contained in the <i>Federal Law—Civil Law Harmonization Act, No. 1</i> at section 6, but with regard to the Province of Quebec only. With regard to the other provinces and territories, the minimum age is not currently provided for in federal legislation and there is some debate about the minimum age in the common law between age twelve for girls and fourteen for boys, and age seven.</p> <p>The new section 2.3 codifies nationally the existing legal requirement for dissolution of any previous marriage, which is currently contained in federal legislation (section 7 of the <i>Federal Law—Civil Law Harmonization Act, No. 1</i> and section 4 of the <i>Civil Marriage Act</i>) and reflected in sections 290, 291 & 293 of the <i>Criminal Code</i>.</p>
4	<p><i>Civil Marriage Act</i> (S.C. 2005, c. 33)</p> <p>5(3) Any court order, made in Canada or elsewhere before the coming into force of this subsection, that declares the marriage to be null and void or that grants a divorce to the spouses dissolves the marriage, for the</p>	<p>4. Subsection 5(3) of the English version of the Act is replaced by the following:</p> <p>5(3) Any court order, made in Canada or elsewhere before the coming into force of this subsection, that declares the marriage to be null or that grants</p>	<p>This clause makes an amendment to the existing English version of subsection 5(3) to replace the term “null and void” with “null” for consistency with the new section 2.3 and to reflect bijural concerns. No change is needed to the existing French version.</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
	purposes of Canadian law, as of the day on which the order takes effect.	a divorce to the spouses dissolves the marriage, for the purposes of Canadian law, as of the day on which the order takes effect.	
5	<p><i>Federal Law—Civil Law Harmonization Act, No. 1</i> (S.C. 2001, c. 4)</p> <p>MARRIAGE</p> <p>4. Sections 5 to 7, which apply solely in the Province of Quebec, are to be interpreted as though they formed part of the <i>Civil Code of Québec</i>.</p> <p>5. Marriage requires the free and enlightened consent of two persons to be the spouse of each other.</p> <p>6. No person who is under the age of sixteen years may contract marriage.</p> <p>7. No person may contract a new marriage until every previous marriage has been dissolved by death or by divorce or declared null.</p>	<p>5. The heading before section 4 and sections 4 to 7 of the <i>Federal Law—Civil Law Harmonization Act, No. 1</i> are repealed.</p>	<p>This clause repeals sections 4 to 7 of the <i>Federal Law—Civil Law Harmonization Act, No. 1</i>, which had set out, for the province of Quebec, the requirements for each party to a marriage to give their free and enlightened consent for marriage; be 16 years of age or above; and dissolve any previous marriage. This clause also repeals the heading before these sections.</p> <p>As clause 3 of this Bill amends the <i>Civil Marriage Act</i> to legislate nationally the same content as sections 5 to 7 of the <i>Federal Law—Civil Law Harmonization Act, No. 1</i>, these sections are rendered redundant.</p>
6	<p><i>Criminal Code</i> (R.S.C., 1985, c. C-46)</p> <p>232(2) A wrongful act or insult that is of such a nature as to be sufficient to</p>	<p>6. (1) Subsection 232(2) of the <i>Criminal Code</i> is replaced by the following:</p> <p>(2) <u>Conduct of the victim that</u></p>	<p>This clause amends the <i>Criminal Code</i> to restrict the application of the partial defence of provocation by replacing the reference in subsection 232(2) to a “wrongful act or insult” of the victim with “the conduct of the victim that would constitute an indictable offence</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
	<p>deprive an ordinary person of the power of self-control is provocation for the purposes of this section, if the accused acted on it on the sudden and before there was time for his passion to cool.</p> <p>232(3)</p> <p>(a) whether a particular wrongful act or insult amounted to provocation, and</p>	<p><u>would constitute an indictable offence under this Act punishable by five or more years of imprisonment and</u> that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section, if the accused acted on it on the sudden and before there was time for his <u>or her</u> passion to cool.</p> <p>(2) Paragraph 232(3)(a) of the Act is replaced by the following:</p> <p><u>(a) whether the conduct of the victim amounted to provocation under subsection (2), and</u></p>	<p>under this Act punishable by five years or more imprisonment."</p> <p>This clause also replaces the reference in paragraph 232(3)(a) to the "wrongful act or insult" of the victim with "the conduct of the victim" and refers back to subsection 232(2).</p> <p>When successful, the defence of provocation produces an acquittal for murder, even though the person has been found to have committed murder beyond a reasonable doubt, and instead produces a conviction for manslaughter. Manslaughter carries a maximum punishment of life in prison, but no minimum punishment, except that where a firearm was used there is a 4 year minimum sentence.</p>
7	<p>Criminal Code (R.S.C., 1985, c. C-46)</p> <p>N/A</p>	<p>7. Subsection 273.3(1) of the Act is amended by striking out "or" at the end of paragraph (b), by adding "or" at the end of paragraph (c) and by adding the following after paragraph (c):</p> <p>(d) under the age of 18 years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against</p>	<p>This clause amends the <i>Criminal Code</i> offence of removing a child from Canada with the intention that an act be committed outside Canada that would be a listed offence in Canada, to two new listed offences.</p> <p>The new paragraph 273.3(1)(d) makes it an offence to do anything for the purposes of removing from Canada a person under the age of 18 years who is ordinarily resident in Canada with the intention that the person be married against their will (which would be made an offence where it occurs in Canada under Clause 8).</p> <p>The new paragraph 273.3(1)(d) also makes it an</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
		<p>section 293.1 in respect of that person or under the age of 16 years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against section 293.2 in respect of that person.</p>	<p>offence to do anything for the purposes of removing from Canada a person under the age of 16 years who is ordinarily resident in Canada with the intention that the person be married while under the age of 16 (which would be made an offence where it occurs in Canada under Clause 8).</p> <p>The existing offence of taking steps to remove a child from Canada for the purpose of certain offences is punishable by imprisonment of a term not exceeding five years when proceeded with by indictment or by imprisonment not exceeding six months is proceeded with by summary conviction, as set out under the current subsection 273.3(2).</p>
8	<p><i>Criminal Code</i> (R.S.C., 1985, c. C-46)</p> <p>N/A</p>	<p>8. The Act is amended by adding the following after section 293:</p> <p>293.1 Every one who celebrates, aids or participates in a marriage rite or ceremony knowing that one of the persons being married is marrying against their will is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.</p> <p>293.2 Every one who celebrates, aids or participates in a marriage rite or ceremony knowing that one of the persons being married is under the age of 16 years is guilty of an indictable offence</p>	<p>This clause amends the <i>Criminal Code</i> to introduce two new offences of celebrating, aiding or participating in a forced marriage ceremony and celebrating, aiding or participating in a marriage ceremony of a person under the age of 16.</p> <p>These new offences (sections 293.1 and 293.2) parallel the existing offence related to participating in a polygamous marriage ceremony at paragraph 293(1)(b) of the <i>Criminal Code</i> and would have the same maximum penalty of five years' imprisonment. These new offences denounce behavior that actively provides social legitimacy to a harmful practice that creates an unwanted and/or harmful legal bond (within which sexual assault and other offences are expected to take place).</p> <p>The offence would not capture attendees at the ceremony unless they engage in some action intended to help the</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
		and liable to imprisonment for a term not exceeding five years.	marriage take place, as the courts have made it clear that criminal liability cannot be based on passive presence at the scene of a crime.
9	<p>Criminal Code (R.S.C., 1985, c. C-46)</p> <p>295. Every one who, being lawfully authorized to solemnize marriage, knowingly solemnizes a marriage in contravention of the laws of the province in which the marriage is solemnized is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.</p>	<p>9. Section 295 of the Act is replaced by the following:</p> <p>295. Every one who, being lawfully authorized to solemnize marriage, knowingly solemnizes a marriage in contravention of <u>federal law</u> or the laws of the province in which the marriage is solemnized is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.</p>	<p>This clause amends the <i>Criminal Code</i> offence of solemnizing a marriage contrary to law (section 295) to clarify that it also includes solemnizing a marriage in contravention of federal law.</p> <p>The current offence applies to lawfully authorized officiants who conduct marriages contrary to the laws of the province in which the marriage is solemnized. As the federal and provincial governments share constitutional power over marriage, provincial laws concerning “the solemnization of marriage” require compliance with federal law for legal validity of the marriage. However, this may not be clear from the legislative text. The proposed amendment would clarify that the offence prohibits a lawfully authorized officiant from performing a marriage contrary to federal law, including but not limited to, forced or underage marriage.</p>
10	<p>Criminal Code (R.S.C., 1985, c. C-46)</p> <p>N/A</p>	<p>10. The Act is amended by adding the following after section 810.01:</p> <p>810.02 (1) A person who fears on reasonable grounds that another person will commit an offence under paragraph 273.3(1)(d) or section 293.1 or 293.2 may lay an information before a provincial court judge.</p>	<p>This clause amends the <i>Criminal Code</i> to introduce a new recognizance order (or peace bond) at section 810.02 that can be issued by a provincial court judge if they are satisfied that an individual has a reasonable fear that another person will commit an offence under of under new paragraph 273.3(1)(d) (removal of a child from Canada for a marriage against their will or a marriage of a child under the age of 16) or new section 293.1 (participating in a forced marriage ceremony) or new section 293.2 (participating in a marriage ceremony of a person under the age of 16).</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
		<p>(2) The judge who receives an information under subsection (1) may cause the parties to appear before a provincial court judge.</p> <p>(3) If the provincial court judge before whom the parties appear is satisfied by the evidence adduced that the informant has reasonable grounds for the fear, the judge may order that the defendant enter into a recognizance to keep the peace and be of good behaviour for a period of not more than 12 months.</p> <p>(4) However, if the provincial court judge is also satisfied that the defendant was convicted previously of an offence referred to in subsection (1), the judge may order that the defendant enter into the recognizance for a period of not more than two years.</p> <p>(5) The provincial court judge may commit the defendant to prison for a term not exceeding 12 months if the defendant fails or refuses to enter into the recognizance.</p>	<p>Consistent with all other peace bond provisions in the <i>Code</i>, subsections (2) to (9) provide for procedural mechanisms, punishment mechanisms and conditions that may be imposed in association with the recognizance.</p> <p>Most of the conditions provided for in subsection 810.02(6) are common to all peace bond provisions. Paragraphs 810.02(6)(a) to (c) and (e) are particularly relevant to forced or early marriage. They permit a court to order:</p> <ul style="list-style-type: none"> • that the defendant be prohibited from making any agreements or arrangements in relation to the feared marriage (paragraph 810.02(6)(a)). This condition could encompass non-criminal behavior, such as making written or oral agreements to forcibly marry one's child or booking a venue for a forced or underage marriage ceremony; • that the defendant be prohibited from taking steps to cause the person in respect of whom it is feared that the offence will be committed to leave the jurisdiction of the court, such as making travel arrangements for that person with the intent that a forced or underage marriage take place in another jurisdiction (paragraph 810.02(6)(b)); • that the defendant deposit any passport or other travel document in their possession, relating to any specified person, in any manner specified by the court (e.g. Canadian passports could be ordered to be remitted to the passport Integrity Branch of Citizenship and Immigration Canada)(paragraph

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<u>Clause</u>	<u>Existing Legislation</u>	<u>Proposed Legislation</u>	<u>Explanation</u>
		<p>(6) The provincial court judge may add any reasonable conditions to the recognizance that the judge considers desirable to secure the good conduct of the defendant, including conditions that</p> <p>(a) prohibit the defendant from making agreements or arrangements for the marriage, whether in or outside Canada, of the person in respect of whom it is feared that the offence will be committed;</p> <p>(b) prohibit the defendant from taking steps to cause the person in respect of whom it is feared that the offence will be committed to leave the jurisdiction of the court;</p> <p>(c) require the defendant to deposit, in the specified manner, any passport or any other travel document that is in his or her possession or control, whether or not such passport or document is in his or her name or in the name of any other specified person;</p> <p>(d) prohibit the defendant</p>	<p>810.02(6)(c)); and</p> <ul style="list-style-type: none"> that the defendant participate in a treatment program, including a family violence counselling program, particularly programs that contain components related to gender equality (paragraph 810.02(6)(e))

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<u>Clause</u>	<u>Existing Legislation</u>	<u>Proposed Legislation</u>	<u>Explanation</u>
		<p>from communicating, directly or indirectly, with any specified person, or refrain from going to any specified place, except in accordance with any specified conditions that the judge considers necessary;</p> <p>(e) require the defendant to participate in a treatment program, including a family violence counselling program;</p> <p>(f) require the defendant to remain within a specified geographic area unless written permission to leave that area is obtained from the provincial court judge; and</p> <p>(g) require the defendant to return to and remain at his or her place of residence at specified times.</p> <p>(7) The provincial court judge shall consider whether it is desirable, in the interests of the defendant's safety or that of any other person, to prohibit the defendant from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition,</p>	

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Clause	Existing Legislation	Proposed Legislation	Explanation
		<p>prohibited ammunition or explosive substance, or all of those things. If the judge decides that it is desirable to do so, the judge shall add that condition to the recognizance and specify the period during which the condition applies.</p> <p>(8) If the provincial court judge adds a condition described in subsection (7) to a recognizance, the judge shall specify in the recognizance how the things referred to in that subsection that are in the defendant's possession are to be surrendered, disposed of, detained, stored or dealt with and how the authorizations, licences and registration certificates that are held by the defendant are to be surrendered.</p> <p>(9) A provincial court judge may, on application of the informant or the defendant, vary the conditions fixed in the recognizance.</p>	
11	<p><i>Criminal Code</i> (R.S.C., 1985, c. C-46)</p> <p>811. A person bound by a recognizance under section 83.3, 810,</p>	<p>11. The portion of section 811 of the Act before paragraph (a) is replaced by the following:</p>	<p>This clause amends the <i>Criminal Code</i> offence of a breach of recognizance (peace bond) by adding a reference to the new recognizance order for forced or underage marriage.</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
	810.01, 810.1 or 810.2 who commits a breach of the recognizance is guilty of	811. A person bound by a recognizance under section 83.3, 810, 810.01, <u>810.02</u> , 810.1 or 810.2 who commits a breach of the recognizance is guilty of	
12	<p><i>Prisons and Reformatories Act</i> (R.S.C., 1985, c. P-20)</p> <p>who is confined in a prison pursuant to a sentence for an offence under an Act of Parliament or any regulations made thereunder, or pursuant to a committal for failure or refusal to enter into a recognizance under section 810, 810.1 or 810.2 of the <i>Criminal Code</i>;</p>	<p>12. The portion of the definition “prisoner” in subsection 2(1) of the <i>Prisons and Reformatories Act</i> after paragraph (b) is replaced by the following:</p> <p>who is confined in a prison pursuant to a sentence for an offence under <u>a provision of</u> an Act of Parliament or any <u>of its</u> regulations, or pursuant to a committal for failure or refusal to enter into a recognizance under section <u>83.3</u>, 810, 810.01, 810.02, <u>810.1</u> or <u>810.2</u> of the <i>Criminal Code</i>;</p>	<p>Clause 12 of the Bill creates a new peace bond, section 810.02, which allows a judge to require any individual to abide by strict conditions to ensure that they will not commit one of the new forced or underage marriage offences. If the offender violates these conditions, the court may commit the defendant to imprisonment for a term of up to 12 months. In order for the offender to be lawfully held in a provincial jail, section 810.02 must be included in the list under the definition of the term “prisoner” in section 2 of the <i>Prisons and Reformatories Act</i> (PRA), similar to existing peace bond provisions.</p> <p>This clause also adds peace bonds under section 83.3 of the <i>Criminal Code</i> (where there is a fear of a terrorist activity), and under section 810.01 (where there is fear of a criminal organization offence or a terrorist offence), as when these peace bonds came into effect, in 2001 and 1997 respectively, they were not included in the PRA section 2 definition for “prisoner”, which is now being opened for a similar purpose and can be corrected.</p>
13	<p><i>Youth Criminal Justice Act</i> (S.C. 2002, c. 1)</p> <p>(2) A youth justice court has jurisdiction to make orders against a young person under sections 810</p>	<p>13. Subsection 14(2) of the <i>Youth Criminal Justice Act</i> is replaced by the following:</p> <p>(2) A youth justice court has jurisdiction to make orders</p>	<p>Clause 13 would amend subsection 14(2) of the <i>Youth Criminal Justice Act</i> (YCJA) to include a reference to the new peace bond (recognizance) to prevent forced or under age marriage, which provides jurisdiction to a youth justice court to make orders under the <i>Criminal Code</i> recognizance provisions, except where the</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
	(recognizance — fear of injury or damage), 810.01 (recognizance — fear of criminal organization offence), and 810.2 (recognizance — fear of serious personal injury offence) of the <i>Criminal Code</i> . If the young person fails or refuses to enter into a recognizance referred to in any of those sections, the court may impose any one of the sanctions set out in subsection 42(2) (youth sentence) except that, in the case of an order under paragraph 42(2)(n) (custody and supervision order), it shall not exceed thirty days.	against a young person under sections 810 (recognizance — fear of injury or damage), 810.01 (recognizance — fear of criminal organization offence), <u>810.02 (recognizance — fear of forced marriage or marriage under the age of 16)</u> and 810.2 (recognizance — fear of serious personal injury offence) of the <i>Criminal Code</i> . If the young person fails or refuses to enter into a recognizance referred to in any of those sections, the court may impose any one of the sanctions set out in subsection 42(2) (youth sentence) except that, in the case of an order under paragraph 42(2)(n) (custody and supervision order), it shall not exceed thirty days.	recognizance could have an adverse impact on youth. Studies on forced marriage indicate that multiple family members can take part in the use of force for the purpose of compelling a person to marry against their will (e.g. assault, uttering threats, forcible confinement). Older siblings may be tasked by their parents with the job of enforcing or assisting with the enforcement of the marriage. As a result, it is highly possible that these preventive peace bonds could effectively be taken out not only against the parents but also siblings or cousins who have used force against the victim of a proposed forced marriage. Some of these individuals may be between the ages of 12 and 18 and therefore under the jurisdiction of the YCJA.
14	<i>Youth Criminal Justice Act</i> (S.C. 2002, c. 1) (a) in respect of an order under section 810 (recognizance — fear of injury or damage), 810.01 (recognizance — fear of criminal organization offence), or 810.2 (recognizance — fear of serious personal injury offence) of that Act or an offence under section 811 (breach of recognizance) of that Act;	13. Paragraph 142(1)(a) of the Act is replaced by the following: (a) in respect of an order under section 810 (recognizance — fear of injury or damage), 810.01 (recognizance — fear of criminal organization offence), <u>810.02 (recognizance — fear of forced marriage or marriage under the age of 16)</u> or 810.2	This clause amends paragraph 142(1)(a) of the YCJA to include a reference to the new peace bond (recognizance) to prevent forced or under age marriage in the application of the recognizance provisions under Part XXVII of the <i>Criminal Code</i> to the proceedings under the YCJA.

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<u>Clause</u>	<u>Existing Legislation</u>	<u>Proposed Legislation</u>	<u>Explanation</u>
		(recognizance — fear of serious personal injury offence) of that Act or an offence under section 811 (breach of recognizance) of that Act;	
15	N/A	<p>14. (1) Part 1 comes into force on a day to be fixed by order of the Governor in Council.</p> <p>(2) Part 3 comes into force on a day to be fixed by order of the Governor in Council.</p>	

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S-7 Clause-by-Clause Motions of Amendments – House Standing Committee on Citizenship and Immigration (CIMM)

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Clause	Motion number	Proposed Amendment	Response
2	PV-1 (May)	<p>That Bill S-7, in Clause 2, be amended by replacing lines 17 and 18 on page 1 with the following:</p> <p>“consistent with subparagraph 293(1)(a)(ii) of the <i>Criminal Code</i> and shall not be interpreted so as to include a person who is in any kind of conjugal union with another person that is in any kind of conjugal union with more than one person at the same time.”</p> <p>Impact of the amendment: The amendment would not be consistent with the criminal law definition for practising polygamy. In situations where there is one husband and multiple wives, the amendment could render the husband inadmissible (unless he is a Canadian) and the wives exempt.</p> <p>For those in Canada, individuals could continue to violate the Criminal Code.</p> <p>For those individuals who are abroad, the inadmissibility could not be used to prevent or deter individuals from practising polygamy in Canada.</p>	<p>The Government does not support this amendment.</p> <p>The exemption provided in this amendment would allow polygamy to continue and runs counter to the objectives of Bill S-7. As the bill's title states, there should be zero tolerance for such practices occurring on Canadian soil.</p> <p>The proposed inadmissibility would support this goal by helping prevent polygamy from occurring in Canada by providing new tools to refuse applications for those who may be travelling to Canada to practise polygamy.</p> <p>If an individual stops practising polygamy, the inadmissibility would cease to apply. If that individual is out of status in Canada, discretionary measures may be used to allow the person to remain in Canada. For example, the person may seek to stay in Canada on humanitarian and compassionate grounds.</p>
2	NDP-2 (Blanchette-Lamothe)	<p>That Bill S-7, in Clause 2, be amended by adding after line 18 on page 1 the following:</p> <p>“(3) The Minister shall provide any foreign national sponsored under this Act by her spouse or common-law partner with all relevant information, in that foreign national's own language, on the rights of and the resources available to women in Canada.”</p>	<p>The Government does not support this amendment because the amendment should be ruled out of scope.</p> <p>There are other non-statutory means to support vulnerable women while minimizing costs to taxpayers.</p> <p>For instance, CIC:</p>

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		<p>Impact of the amendment: The amendment would, or intends to, create a legislative obligation for CIC to provide such information to women being sponsored.</p> <p>This amendment could possibly be ruled out of scope as it is not linked to the inadmissibility provision.</p>	<ul style="list-style-type: none"> o disseminates the brochure "Information for Sponsored Spouses or Partners" to those subject to the conditional permanent residence measure who are victims of abuse or neglect, advising them that they do not have to remain in an abusive situation and indicating where to find help; o funds settlement and integration organizations that support newcomers seeking assistance and protection from situations of abuse by offering information and workshops; o publishes <i>Discover Canada</i> and <i>Welcome to Canada</i> which describes the principle of gender equality in Canada and states that family and honour-based violence are unacceptable in Canada; o provides protection and assistance for victims of human trafficking and emergency processing of work permits for live-in caregivers who are victims of abuse in their workplace; o supports the Women at Risk program within the resettlement program to ensure that female refugees who face a heightened risk to their safety and security are identified and brought to Canada quickly and safely; and o created a designated line within its Call Centre for victims of abuse or forced marriage.
4	LIB-2 (McCallum)	<p>That Bill S-7, in Clause 4, be amended by replacing lines 6 and 7 on page 2 with the following:</p> <p>"2.2(1) No person who is under the age of 18 may contract marriage.</p> <p>(2) Despite subsection (1), the Governor in Council may, by regulation, at the request of the lieutenant governor in council of a province, that the minimum age to contract marriage is 16 or 17, as the case may be, may seek an order to declare that he or she has the capacity to contract marriage."</p>	<p>The Government does not support this amendment.</p> <p>The constitutional jurisdiction of the federal Parliament is to set the absolute minimum age for marriage for all Canadian residents. The proposal would result in several different absolute minimum ages. It is unclear whether the age restrictions would apply according to the province or territory where the marriage takes place, or the province or territory where one or both of the couple ordinarily reside.</p>

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		<p>Impact of the amendment: The amendment would result in several different absolute minimum ages across Canada, rather than one national minimum age for all Canadians, and risk confusion for Canadians who marry outside of Canada.</p>	<p>This would lead to legal confusion for Canadians and in particular for young people who wish to marry.</p> <p>For those Canadian residents who marry outside of Canada, there would also be legal confusion as to which minimum age applies.</p> <p>The Government of Canada agrees with the apparent intention of the proposed amendment, which is to provide additional protections to young people who marry between age 16 and the age of majority. But the Government of Canada prefers to achieve that goal through the cooperation of the provinces and territories.</p> <p>Age 16 is also the absolute minimum age for marriage in like-minded countries, with only limited exceptions.</p>
4	PV-2 (May)	<p>That Bill S-7, in Clause 4, be amended by deleting lines 6 and 7 on page 2.</p> <p>Impact of the amendment: The amendment would delete the proposed new section 2.2 of the <i>Civil Marriage Act</i>, which proposes a new national absolute minimum age for marriage of 16, and move it without any change to a new section 2.4 in a separate proposed new clause 4.1 (see PV-3) in order that it not come into force until a House of Commons Committee or a Senate Committee or a joint House of Commons and Senate Committee submits a report on the "proper minimum age for contracting a marriage" (see PV-4).</p>	<p>The Government does not support this amendment.</p> <p>The amendment makes no substantive change and is unnecessary. The amendment moves the proposed new section 2.2 of the <i>Civil Marriage Act</i>, which sets out a new national minimum age for marriage, to a new section 2.4 in a separate proposed new clause 4.1 (see PV-3) in order that it not come into force until a House of Commons Committee or a Senate Committee or a joint House of Commons and Senate Committee submits a report on the "proper minimum age for contracting a marriage" (see PV-4).</p> <p>This approach leaves a lack of uniformity in the law in Canada with regard to the absolute minimum age for marriage. It would leave the minimum age for marriage at 16 in the Province of Quebec only. In other provinces and territories, the common law would apply.</p>

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			As mentioned, this would deny legal protection to minors who are Canadian residents not residing in the Province of Quebec.
4.1 (new)	PV-3 (May)	<p>That Bill S-7 be amended by adding after line 11 on page 2 the following new clause:</p> <p>“4.1 The Act is amended by adding the following after section 2.3:</p> <p>2.4 No person who is under the age of 16 years may contract marriage.”</p> <p>Impact of the amendment: The amendment would add a proposed new section 2.4 of the <i>Civil Marriage Act</i>, with the same wording as the current proposed section 2.2 which PV-2 proposes to delete.</p>	<p>The Government does not support this amendment.</p> <p>The amendment makes no substantive change and is unnecessary.</p> <p>The only reason for the amendment is to move the current proposed new section 2.2 of the <i>Civil Marriage Act</i>, which sets out a new national minimum age for marriage, to a new section 2.4 in a separate proposed new clause 4.1.</p>
5.1 (new)	PV-4 (May)	<p>That Bill S-7 be amended by adding after line 19 on page 2 the following new clause:</p> <p>“COMING INTO FORCE</p> <p>5.1 Section 4.1 comes into force on a day to be fixed by order of the Governor in Council, but the day that is fixed must not be before the day on which any committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for that purpose submit to the Senate, the House of Commons or both Houses of Parliament, as the case may be, a report respecting the proper minimum age for contracting a marriage under section 2.4 of the <i>Civil Marriage Act</i>, as enacted by that section 4.1.”</p> <p>Impact of the amendment:</p>	<p>The Government does not support this amendment.</p> <p>The amendment would add unnecessary delay to the needed protection for minors who are Canadian residents (other than those residing in the Province of Quebec) from early marriage under age 16.</p> <p>Age 16 was chosen as the appropriate absolute minimum age for marriage in Canada based on earlier study by the Uniform Law Conference of Canada, and the need to balance protection for minors against the desire not to prohibit mature minors from choosing to marry the parent of their common child.</p> <p>Pending the establishment or designation of a Committee of Parliament to study the “proper minimum age for contracting a marriage”, the current state of the law in</p>

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			<p>Zealand have <u>abolished</u> the provocation defence entirely. In 2014, the Australian state of New South Wales passed legislation similar to that in Bill S-7 that limits the provocation defence to conduct by the victim that amounts to a relatively serious criminal offence. Three Australian states and the United Kingdom have limited their provocation defences in other ways. The reforms proposed in Bill S-7 will bring Canada's law of provocation into line with those of similar countries.</p> <p>As the intent of the amendment is to defeat clause 7 and it does so by deleting the text that would change the law, the amendment may be out of order. The correct procedure is for the Committee to vote down clause 7, not for the content of clause 7 to be deleted by amendment.</p>
7	LIB-3 (McCallum)	<p>That Bill S-7, in Clause 7, be amended</p> <p>(a) by replacing lines 12 to 14 on page 3 with the following:</p> <p>“stitute an indictable offence under this Act or discrimination on a prohibited ground of discrimination within the meaning of the <i>Canadian Human Rights Act</i> and that is of such a nature as”</p> <p>(b) by adding after line 19 on page 3 the following:</p> <p>“(2.1) For greater certainty, the conduct of the victim, in a case where the accused believes that it has brought shame or dishonour to his family, does not constitute discrimination on a prohibited ground of discrimination that would amount to provocation under subsection (2).”</p> <p>Impact of the amendment:</p>	<p><u>A) The Government does not support amendment (a) because:</u></p> <p>It is not clear whether the amendment means that conduct must be discrimination that is <u>contrary</u> to the CHRA (i.e. specific discriminatory practices described in the CHRA relative to the workplace and the marketplace), or whether “discrimination” is used in a more general sense (which is not defined in law) and only the grounds of discrimination in the CHRA are invoked;</p> <p>However it would be interpreted, it would broaden the existing defence of provocation;</p> <p>The list of prohibited grounds in the CHRA is tailored to discrimination in the workplace and marketplace, and is inappropriate to the criminal context; and</p>

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		<p>The amendment would delay the coming into force of the new proposed national absolute minimum age for marriage until such time as a Committee of Parliament is established or designated to study the "proper minimum age for contracting a marriage", and reports. In the interim, the current state of the law in Canada with regard to the absolute minimum age for marriage would remain – i.e. federal law would specify age 16 as the minimum age for marriage in the law of the Province of Quebec only, and in other provinces and territories, the common law would apply, which is generally interpreted as age 12 for girls and age 14 for boys – with the result that minors who are Canadian residents (other than those residing in the Province of Quebec) would be denied legal protection from early marriage under age 16, until such time as such a Committee reported.</p>	<p>Canada with regard to the absolute minimum age for marriage would remain – i.e. federal law would specify age 16 as the minimum age for marriage in the law of the Province of Quebec only, and in other provinces and territories, the common law would apply.</p> <p>The effect of this amendment would be to deny legal protection to minors who are Canadian residents (other than those residing in the Province of Quebec) from early marriage under age 16.</p> <p>Age 16 is also the absolute minimum age for marriage in like-minded countries, with only limited exceptions.</p>
7	PV-5 (May)	<p>That Bill S-7, in Clause 7, be amended by deleting lines 9 to 19 on page 3.</p> <p>Impact of the amendment: The amendment would leave unchanged the scope of the current defence of provocation.</p>	<p>The Government does not support this amendment.</p> <p>This amendment would leave the defence of provocation intact, and would therefore permit persons accused of murdering their spouses or other family members who provoked them through lawful words or actions to continue to raise the defence. In some types of circumstances and depending on the evidence, the defence could be successful in these types of cases. In many cases, even if the defence is ultimately unsuccessful, litigating whether and how the defence applies in these cases is likely to be costly and time-consuming for all parties. The amendment therefore runs counter to the objectives of Bill S-7, which is to modify the law so that it clearly excludes provocation on the basis of lawful conduct.</p> <p>Criticisms of the defence of provocation have been made in all jurisdictions with a legal tradition similar to Canada's that have the defence. In the past decade, most such jurisdictions have either abolished or limited their provocation defences. Three Australian states and New</p>

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		<p>The amendments would work together to make the defence of provocation available where the provoking conduct of the victim is "discrimination on a prohibited ground of discrimination within the meaning of the <i>Canadian Human Rights Act</i>" (CHRA) and then to exclude the expanded notion of provocation where the accused believes that the victim's behaviour brought shame or dishonour to their family.</p>	<p>No other common law jurisdictions have amended their provocation laws to include "discrimination: for instance, New Zealand and the Australian states of Victoria, Tasmania and Western Australia have abolished provocation; New South Wales renamed the defence "extreme provocation" and now limits it to criminal offences punishable by at least 5 years in prison (the same approach as Bill S-7); and the United Kingdom abolished provocation and replaced it with a defence of "loss of control" that is available where the accused either had a "fear of serious violence from the victim" or where the victim did or said something "of an extremely grave nature" that gave Accused "justifiable sense" of being "seriously wronged".</p> <p><u>B) The Government does not support amendment (b) because:</u></p> <p>It is dependent on amendment (a); and</p> <p>It would not prevent the defence from being raised in honour-killing cases where there is no evidence related to the beliefs of the accused (shame/dishonour caused by the victim).</p>
9	PV-6 (May)	<p>That Bill S-7, in Clause 9, be amended</p> <p>(a) by replacing line 1 on page 4 with the following:</p> <p>"293.1 Any person 18 years of age or more who celebrates, aids or"</p> <p>(b) by replacing line 7 on page 4 with the following:</p> <p>"293.2 Any person 18 years of age or more who celebrates, aids or"</p>	<p>The Government does not support amendment (a) and (b) because:</p> <p>The <i>Criminal Code</i> sets out offences that have general application and proclaim standards of socially-unacceptable behavior.</p> <p>It is important to underline that youth under age 18, who are accused of a criminal offence, are subject to <u>a separate regime in relation to charging</u>, criminal procedure, sentencing, rehabilitation and reintegration pursuant to the</p>

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	<p>Impact of these amendments: These amendments would exclude youth between the ages of 12 and 17 from criminal liability for the proposed offences of forced and underage marriage ceremony.</p>	<p><u>Youth Criminal Justice Act</u> (YCJA). The YCJA recognizes that youth must be held accountable, but in a way that takes into account their greater dependency, reduced level of maturity, and the principle that youth are presumed to be less morally blameworthy than adults.</p> <p>For instance, the YCJA requires police officers to consider using alternatives to charging or "extrajudicial measures" in all cases of youth offending. If extrajudicial measures are deemed to be inappropriate, charges may be laid. Whether charges proceed to trial will be based on the prosecutor's assessment of the public interest and whether there is a reasonable prospect of conviction in each individual case.</p> <p>Studies on forced marriage indicate that multiple family members can take part in the use of force for the purpose of compelling a person to marry against their will. Siblings may be tasked by their parents with the job of enforcing or assisting with the enforcement of the marriage.</p> <p>Excluding youth from the ambit of these offences might result in parents' increased reliance on their minor children to force another child into an unwanted marriage, and may fail to hold accountable individuals whose conduct is blameworthy and which directly contributes to the victimization of another.</p> <p>Similarly, providing immunity for anyone under age 18 who marries another person knowing that the other person is marrying against their will or is under the age of 16, fails to take into consideration that the social harm and impact on the victim is the same regardless of whether the person they are forced to marry is above or below the age of 18.</p> <p>Finally, it would be inconsistent for the law to hold these youth accountable for the general offences committed in the</p>
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			course of forcing someone to marry, such as assault and forcible confinement, while exempting them from the specific offence of active participation in the forced marriage ceremony.
Short title	LIB-1 (McCallum)	<p>That Bill S-7, in the short title, be amended by replacing line 5 on page 1 with the following:</p> <p><i>"Tolerance for Barbaric Practices Act."</i></p> <p>Impact of the amendment: <u>The amendment would remove the term "Cultural" from the short title of the Act.</u></p>	<p>The Government does not support this amendment.</p> <ul style="list-style-type: none"> • <u>The term "barbaric cultural practices" encompasses forms of family violence, such as child, forced and polygamous marriage, female genital mutilation and so-called "honour"-based violence.</u> • <u>These practices have devastating impacts, particularly on women and girls as well as on families and society in general. They severely affect all those involved, from influencing immigration outcomes to breaking down opportunities for integration and success.</u> • <u>The Bill affirms the Government's strong stance against these practices, and sends the message that such acts are contrary to Canadian values, unacceptable to Canadians, and will not be tolerated in Canada.</u> • <u>As Minister of CIC Chris Alexander stated during the House of Commons Second Reading debate on Bill S-7, "...the defence of these barbaric practices is often mistakenly made in the name of culture. We want to point out that the only culture that is unacceptable here, and which we hope would be eliminated from Canada with this bill, is the culture of violence against women. There should be no defence of violence against women that makes a cultural reference.</u>

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			There is no room for any particular group to be insulted by this bill because, if they are engaging in violence against women, they are engaging in a crime, a barbaric practice, and all Canadians understand that it is wrong. "(Second Reading Debate, March 12, 2015)
Short title	NDP-1 (Blanchette-Lamothe)	<p>That Bill S-7, in the short title, be amended by replacing line 5 on page 1 with the following:</p> <p><i>"Tolerance for Barbaric Practices Towards Women and Children Act."</i></p> <p>Impact of the amendment: The amendment would remove the term "Cultural" from the short title of the Act and add the words "Towards Women and Children".</p>	<p>The Government does not support this amendment.</p> <ul style="list-style-type: none"> • The term "barbaric cultural practices" encompasses forms of family violence, such as child, forced and polygamous marriage, female genital mutilation and so-called "honour"-based violence. • These practices have devastating impacts, particularly on women and girls as well as on families and society in general. They severely affect all those involved, from influencing immigration outcomes to breaking down opportunities for integration and success. • The Bill affirms the Government's strong stance against these practices, and sends the message that such acts are contrary to Canadian values, unacceptable to Canadians, and will not be tolerated in Canada. • As Minister of CIC Chris Alexander stated during the House of Commons Second Reading debate on Bill S-7, "...the defence of these barbaric practices is often mistakenly made in the name of culture. We want to point out that the only culture that is unacceptable here, and which we hope would be eliminated from Canada with this bill, is the culture of violence against

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			women. There should be no defence of violence against women that makes a cultural reference.
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S-7 clause by clause motions of amendments (Report Stage)

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Motion number	Proposed Amendment	Response
<p>Motion No. 1</p> <p>MP Blanchette-Lamothe (Pierrefonds-Dollard) NDP</p> <p>MP Mathysen (London-Fanshawe) NDP</p>	<p>That Bill S-7 be amended by deleting the long title.</p>	<p>The Government does not support this amendment.</p> <p>The long title of the Bill is essential and should not be deleted. It sets out the purpose of the Bill, in general terms, and accurately reflects its content which is an Act to amend the <i>Immigration and Refugee Protection Act</i>, the <i>Civil Marriage Act</i> and the <i>Criminal Code</i> and to make consequential amendments to other Acts.</p> <p>This Bill is designed to deliver on the commitment in the 2013 Speech From The Throne to ensure that the inhumane practices of early and forced marriage, and other forms of barbaric cultural practices such as polygamy and so-called "honour" - based violence, do not occur on Canadian soil.</p> <p>The Bill enhances legal protections for vulnerable Canadians, particularly women and children, from these insidious forms of family violence.</p>

<p>Motion No. 2</p> <p>MP Blanchette-Lamothe (Pierrefonds-Dollard) NDP</p> <p>MP Mathysen (London-Fanshawe) NDP</p>	<p>That Bill S-7 be amended by deleting the short title.</p>	<p>The Government does <u>not</u> support this amendment.</p> <p>Our Government is committed to help ensure that barbaric cultural practices do not occur on Canadian soil. The term "barbaric cultural practices" encompasses forms of family violence, such as early, forced and polygamous marriage, and so-called "honour"-based violence.</p> <p>These practices have devastating impacts, particularly on women and girls as well as on families and society in general. They severely affect all those involved, from influencing immigration outcomes to breaking down opportunities for integration and success. Through these amendments, Bill S-7 seeks to improve the protection of women and children from such harmful cultural practices.</p> <p><i>The Zero Tolerance for Barbaric Cultural Practices Act</i> sends a clear message to anyone coming to Canada, and to those who are already part of Canadian society, that such practices are incompatible with Canadian values and will not be tolerated here.</p>
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<p>Motion No. 3</p> <p>MP Blanchette-Lamothe (Pierrefonds-Dollard) NDP</p> <p>MP Mathysen (London-Fanshawe) NDP</p>	<p>That Bill S-7 be amended by deleting Clause 2.</p> <p>Clause 2 of the Bill proposes to amend the <i>Immigration and Refugee Protection Act</i> (IRPA) to introduce a new provision (section 41.1) that will create a new ground of inadmissibility for both foreign nationals and permanent residents who practise polygamy in Canada. Under the proposed changes, a permanent resident or foreign national who is either in Canada or applying to come to Canada with any of their spouses would be considered to be practising polygamy. Individuals who come with even one of their spouses could be found inadmissible.</p>	<p>The Government does not support this amendment.</p> <p>The proposed inadmissibility would help prevent polygamy from occurring in Canada by providing new tools within the immigration program to refuse applications for those who may be travelling to Canada to practice polygamy and to render inadmissible those who practice polygamy once in the country.</p>
<p>Motion No. 4</p> <p>MP May (Saanich-Gulf Islands) Green</p>	<p>That Bill S-7 be amended by deleting Clause 3.</p>	<p>The Government does not support this amendment.</p> <p>Deleting Clause 3 would have the effect of Clause 2 coming into effect upon Royal Assent.</p> <p>Clause 3 is needed to ensure that Clause 2 may be proclaimed into force at a later date and after required regulatory amendments are made in order to support effective implementation.</p>

<p>Motion No. 5</p> <p>MP May (Saanich-Gulf Islands) Green</p>	<p>That Bill S-7 be amended by deleting Clause 4.</p> <p>Clause 4 of the Bill proposes to add three new sections to the <i>Civil Marriage Act</i>.</p> <p>The proposed new section 2.1 would codify nationally the existing legal requirement for free and enlightened consent to marriage, which is currently in federal legislation that applies only with regard to the law of the Province of Quebec.</p> <p>The proposed new section 2.2 would enact a new national minimum age of 16 for marriage, below which no marriage of any child ordinarily resident in Canada can be contracted anywhere in the world. Currently, this minimum age applies only in the Province of Quebec. In other provinces and territories, the minimum age is currently in the common law only which is usually interpreted as age twelve for girls and fourteen for boys.</p> <p>The proposed new section 2.3 would codify nationally the existing legal requirement for dissolution of any previous marriage, which is currently contained in federal legislation that applies only in the Province of Quebec, as well as in section 4 of the <i>Civil Marriage</i></p>	<p>The Government does not support this amendment.</p> <p>Deleting Clause 4 would result in a lack of uniformity in the law in Canada with regard to the codification of the existing legal requirement for free and enlightened consent to marriage, and the existing legal requirement for dissolution of any previous marriage.</p> <p>Deleting Clause 4 would also leave the current lack of uniformity in the law in Canada unchanged with regard to the absolute minimum age for marriage. By not establishing a national absolute minimum age for marriage of 16, deleting this Clause would result in denying protection to children who are ordinarily resident in Canada (other than those residing in the Province of Quebec) from early marriage under age 16.</p>
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	<i>Act</i> and is reflected in sections 290, 291 & 293 of the <i>Criminal Code</i> .	
Motion No. 6 MP May (Saanich-Gulf Islands) Green	<p>That Bill S-7 be amended by deleting Clause 5.</p> <p>Clause 5 of the Bill proposes to amend the existing English version of subsection 5(3) of the <i>Civil Marriage Act</i> to replace the term “null and void” with “null” for consistency with the new section 2.3 and to reflect bijural concerns. No change is needed to the existing French version.</p>	<p>The Government does not support this amendment.</p> <p>Deleting Clause 5 would leave bijural concerns unaddressed, as the existing subsection 5(3) of the <i>Civil Marriage Act</i> requires amendment to fully address the law in the Province of Quebec.</p>
Motion No. 7 MP May (Saanich-Gulf Islands) Green	<p>That Bill S-7 be amended by deleting Clause 6.</p> <p>Clause 6 of the Bill proposes to repeal paragraph 150.1(2.1)(b) of the <i>Criminal Code</i>, which provides an exception for certain sexual offences involving a child between the ages of 14 and 16 years if the complainant and the accused are married.</p> <p>This exception was created precisely because, at the time the age of consent for sex was raised from 14 to 16 (in the <i>Tackling Violence Crime Act</i>, 2008), it was known that in some provinces, children between 14 and 16 could legally marry with the consent of their parents or</p>	<p>The Government does not support this amendment.</p> <p>Deleting Clause 6 would leave an exception in the <i>Criminal Code</i> from certain sexual offences involving a child between the ages of 14 and 16 years if the complainant and the accused are married.</p> <p>Other than in transitional cases where a child under the age of 16 is married before this Bill comes into force, such an exemption would be inconsistent with 16 as the proposed new national minimum age of marriage.</p>

	<p>the courts, and should therefore be able to consent to sex. Because there could be marriages of persons under the age of 16 that take place shortly before the amendments to the <i>Civil Marriage Act</i> in this bill would come into force, this clause also amends the <i>Criminal Code</i> to add a transitional provision to make an exception to the designated offences where, at the date of coming into force of the amendments to the <i>Civil Marriage Act</i> in this bill, the accused is married to the complainant who is still under the age of 16.</p>	
<p>Motion No. 8</p> <p>MP Blanchette-Lamothe (Pierrefonds-Dollard) NDP</p> <p>MP Mathysen (London-Fanshawe) NDP</p>	<p>That Bill S-7 be amended by deleting Clause 7.</p> <p>Clause 7 of the Bill proposes to limit the defence of provocation in the <i>Criminal Code</i> by replacing the reference in subsection 232(2) to a "wrongful act or insult" of the victim with "the conduct of the victim that would constitute an indictable offence under this Act punishable by five years or more imprisonment."</p>	<p>The Government does not support this amendment.</p> <p>The impact of the amendment would be to leave unchanged the scope of the current defence of provocation.</p> <p>Currently, the defence of provocation can be raised by a person accused of killing their spouse or child in circumstances that could be described as an "honour-killing". It can also be raised by men who kill their current or former spouses.</p> <p>Unless the defence is limited, it can continue to be raised by people facing a murder charge where they allege that the</p>

		<p>victim provoked them to kill by saying or doing something lawful that they find insulting or offensive.</p> <p>In the past decade, most jurisdictions similar to Canada have either abolished or limited their provocation defences. This reform would bring Canada's provocation law into line with those of similar countries.</p>
<p>Motion No. 9</p> <p>MP May (Saanich-Gulf Islands) Green</p>	<p>That Bill S-7 be amended by deleting Clause 8.</p> <p>Clause 8 of the Bill proposes the expansion of the <i>Criminal Code</i> offence of removing a child from Canada with the intention that an act be committed outside Canada that would be a listed offence in Canada (section 273.3), to include the two proposed new offences related to an underage or forced marriage (set out in Clause 9 of the Bill).</p>	<p>The Government does not support this amendment.</p> <p>Deleting this Clause would leave children under the age of 18 years, who are ordinarily resident in Canada vulnerable to being removed from the country for the purpose of a forced or underage marriage.</p> <p>The deletion of the proposed expansion of the offence of removing a child from Canada to include removing a child for the purpose of an underage or forced marriage ceremony abroad would be inconsistent with a key objective of Bill S-7 to prevent underage and forced marriages of vulnerable Canadians or residents from taking place.</p>

<p>Motion No. 10</p> <p>MP Blanchette-Lamothe (Pierrefonds-Dollard) NDP</p> <p>MP Mathysen (London-Fanshawe) NDP</p>	<p>That Bill S-7 be amended by deleting Clause 9.</p> <p>Clause 9 of the Bill proposes the creation of two new <i>Criminal Code</i> offences of celebrating, aiding or participating in a forced marriage ceremony and celebrating, aiding or participating in a marriage ceremony of a person under the age of 16.</p>	<p>The Government does not support this amendment.</p> <p>The deletion of the proposed new offences would be inconsistent with a key objective of Bill S-7 to ensure that underage and forced marriages do not occur on Canadian soil.</p> <p>The proposed new offences were developed in response to identified gaps in the <i>Criminal Code</i> as there are currently no criminal offences directed specifically at underage or forced marriages. More than ten similarly-situated countries have introduced specific forced marriage offences over the past decade.</p> <p>These proposed new offences are directed to the unique harm associated with the community endorsement of the creation of an unwanted and harmful legal bond within which sexual assaults are expected to occur.</p> <p>A forced marriage ceremony is itself a violation of the victim's fundamental right to choose whether, when and to whom she/he will marry. By extension, the same applies to the marriage of a child under the age of 16 as that child would be considered legally incapable of consenting to the marriage (as provided for in Clause</p>
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		<p>4 of the Bill). Knowingly participating in a forced marriage is a harm against the victim that is separate and distinct from other offences which might also be committed in advance of a forced marriage, such as assault or forcible confinement of the victim.</p> <p>The new offences also serve a critical role to anchor the proposed new forced or underage marriage peace bond to prevent the marriage ceremony from taking place (Clause 11) and as an anchor for the amendment to the offence of removing a child under 18 years of age from Canada for the purpose of a forced or underage marriage ceremony abroad (Clause 8).</p>
<p>Motion No. 11</p> <p>MP May (Saanich-Gulf Islands) Green</p>	<p>That Bill S-7 be amended by deleting Clause 10.</p> <p>Clause 10 of the Bill proposes to amend the <i>Criminal Code</i> offence of solemnizing a marriage contrary to law in section 295 to clarify that it also includes solemnizing a marriage in contravention of federal law.</p>	<p>The Government does not support this amendment.</p> <p>Deleting Clause 10 would maintain the current situation where there is some confusion over whether federal law is included in the existing section 295 of the <i>Criminal Code</i>. The current offence applies to lawfully authorized officiants who conduct marriages contrary to the laws of the province in which the marriage is solemnized. As the federal and provincial governments share</p>

		<p>constitutional power over marriage, provincial laws concerning “the solemnization of marriage” require compliance with federal law for legal validity of the marriage. However, this may not be clear from the legislative text.</p> <p>The proposed amendment in Clause 10 would clarify that the offence prohibits a lawfully authorized officiant from performing a marriage contrary to federal law.</p>
<p>Motion No. 12</p> <p>MP May (Saanich-Gulf Islands) Green</p>	<p>That Bill S-7 be amended by deleting Clause 11.</p> <p>Clause 11 of the Bill would amend the <i>Criminal Code</i> to introduce a new recognizance order (or peace bond) at section 810.02 that can be issued by a provincial court judge if they are satisfied that an individual has a reasonable fear that another person will commit an offence under new paragraph 273.3(1)(d) (removal of a child from Canada for a marriage against their will or a marriage of a child under the age of 16) or new section 293.1 (participating in a forced marriage ceremony) or new section 293.2 (participating in a marriage ceremony of a person under the age of 16).</p>	<p>The Government does not support this amendment.</p> <p>Deleting Clause 11 of the Bill would be inconsistent with a key objective of Bill S-7 to prevent underage and forced marriages of vulnerable Canadians or residents from taking place.</p> <p>The new peace bond provides guidance to the court about the types of conditions that may be imposed in the unique situations of a threatened forced or underage marriage ceremony. Some of these are the same as other peace bonds in the <i>Criminal Code</i> – for instance, no contact or communication with a person who fears for their safety – while others have been designed for the types of circumstances</p>

		<p>that would specifically assist in preventing a forced marriage, for instance:</p> <ul style="list-style-type: none">• preventing the defendant from leaving the jurisdiction of the court;• preventing the defendant from making plans or arrangements related to the underage or forced marriage, such as booking a wedding venue or plane tickets to leave the country for the ceremony;• requiring the defendant to surrender passports or other travel documents to the court; and• requiring the defendant to participate in a treatment program that includes family violence counselling. <p>Because a peace bond does not constitute a criminal charge, the proposed new peace bond would play an important role with respect to those victims who may be reluctant to engage the authorities because they do not want their family members prosecuted. In some cases, family members may be otherwise law-abiding individuals and their actions are simply</p>
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		<p>misguided and not intended to be harmful. The availability of a peace bond would encourage potential victims to seek out the support of the criminal justice system without fear of criminally prosecuting family members.</p> <p>The proposed forced marriage peace bond provisions in the <i>Criminal Code</i> are similar to the highly successful civil forced marriage protection orders available in the United Kingdom (UK). Apart from the fact that the UK forced marriage protection orders are civil, while the proposed forced marriage peace bonds in Bill S-7 are under the <i>Criminal Code</i>, <u>they are otherwise alike in many respects.</u></p> <p>Deleting this Clause would have the effect of denying victims of a potential forced or underage marriage with the necessary tools to prevent these marriages from taking place, either in Canada or abroad.</p>
<p>Motion No. 13</p> <p>MP May (Saanich-Gulf Islands) Green</p>	<p>That Bill S-7 be amended by deleting Clause 12.</p> <p>Clause 12 proposes to amend the <i>Criminal Code</i> offence of a breach of recognizance (peace bond) at section 811 by adding a reference to the new recognizance order</p>	<p>The Government does not support this amendment.</p> <p>Deleting Clause 12 would have the effect of rendering the proposed new forced or underage marriage peace bonds unenforceable in the event of a breach.</p>

	for forced or underage marriage (in Clause 11 of the Bill).	While the intent of the peace bond as a preventative order is not to prosecute the defendant but rather to prevent the occurrence of a particular offence, the threat of a criminal sanction upon a breach of the order is required for the order to be consistent with other peace bonds, or recognizance orders, within the <i>Criminal Code</i> .
Motion No. 14 MP May (Saanich-Gulf Islands) Green	<p>That Bill S-7 be amended by deleting Clause 13.</p> <p>Clause 13 of the Bill proposes to add to the list under the definition of the term "prisoner" in section 2 of the <i>Prisons and Reformatories Act</i> (PRA), the new forced or underage marriage peace bond in the proposed new section 810.02 of the <i>Criminal Code</i> (in Clause 11 of the Bill). <u>If the offender violates the conditions</u> of the new peace bond, the court may commit the defendant to imprisonment for a term of up to 12 months. In order for the offender to be lawfully held in a provincial jail, section 810.02 must be included in section 2 of the PRA, similar to existing peace bond provisions.</p>	<p>The Government does not support this amendment.</p> <p>Deleting Clause 13 would prevent a judge from ordering someone to be lawfully held in a provincial jail for a term of up to 12 months if they violate the conditions contained in the new peace bond provision proposed in Clause 11, similar to existing peace bond provisions.</p>
Motion No. 15	That Bill S-7 be amended by deleting Clause 14.	The Government does not support this amendment.

<p>MP May (Saanich-Gulf Islands) Green</p>	<p>Clause 14 of the Bill proposes to amend subsection 14(2) of the <i>Youth Criminal Justice Act</i> (YCJA) to include a reference to the new peace bond (proposed in Clause 11 of this Bill) to prevent forced or underage marriage. Subsection 14(2) provides jurisdiction to a youth justice court to make orders under the <i>Criminal Code</i> recognizance provisions, except where the recognizance could have an adverse impact on youth.</p>	<p>Studies on forced marriage indicate that multiple family members can take part in the use of force for the purpose of compelling a person to marry against their will (e.g. assault, uttering threats, forcible confinement). Older siblings may be tasked by their parents with the job of enforcing or assisting with the enforcement of the marriage. Peace bonds are preventive tools. The courts can order to impose conditions to keep the peace. As a result, it is highly possible that these preventive peace bonds could effectively be taken out not only against the parents but also siblings or cousins who have used force against the victim of a proposed forced marriage. Some of these individuals may be between the ages of 12 and 18 and therefore under the jurisdiction of the YCJA.</p> <p>Deleting Clause 14 would leave youth justice courts without any jurisdiction to make orders under the new peace bond (proposed in Clause 11 of this Bill) to prevent forced or underage marriage.</p>
<p>Motion No. 16</p> <p>MP May (Saanich-Gulf Islands)</p>	<p>That Bill S-7 be amended by deleting Clause 15.</p>	<p>The Government does not support this amendment.</p>

<p>Green</p>	<p>Clause 15 of the Bill proposes to amend paragraph 142(1)(a) of the <i>Youth Criminal Justice Act</i> (YCJA) to include a reference to the new peace bond (proposed in Clause 11 of this Bill) to prevent forced or underage marriage, in the application of the recognizance provisions under Part XXVII of the <i>Criminal Code</i> to the proceedings under the YCJA.</p>	<p>Peace bonds are preventive tools. The courts can order to impose conditions to keep the peace. Deleting Clause 15 would prevent the inclusion of a reference to the new forced or underage marriage peace bond (proposed in Clause 11 of this Bill) in the application of the recognizance provisions of the <i>Criminal Code</i> to the proceedings under the <i>Youth Criminal Justice Act</i>.</p>
<p>Motion No. 17</p> <p>MP May (Saanich-Gulf Islands) Green</p>	<p>That Bill S-7 be amended by deleting Clause 16.</p> <p>Clause 16 of the Bill sets out that Parts 1 and 3 of the Bill would come into force by order of the Governor-in-Council.</p>	<p>The Government does not support this amendment.</p> <p>Deleting Clause 16 would bring Parts 1 and 3 into force immediately upon Royal Assent of the Bill, which would not allow the necessary time for required regulations under Part 1, and for notice under Part 3 of the Bill.</p>

Assad, Michael

From: Klineberg, Joanne
Sent: 2014-Sep-29 4:21 PM
To: Soyez, Louise; Blackell, Gillian
Cc: * CPAU Group
Subject: RE: EFM Bill--Bill Review Pkg

Louise, just for confirmation, are you saying that Carole's one email sent at 3:16 pm is the only comment she had with respect to the package? If so, that's fine – but if there were other changes that either Carole or SADMOM proposed to the materials, could Gillian and I get a copy so that we can see how they are altered from the versions we have? Thanks

From: Soyez, Louise
Sent: September 29, 2014 4:12 PM
To: Blackell, Gillian
Cc: Klineberg, Joanne; Morency, Carole; * SADMOM/Admin; * CPAU Group; Nesbitt, Scott
Subject: RE: EFM Bill--Bill Review Pkg

Hi Gillian

Yes the package was approved and received from SADMOM and it has been forwarded to DMO. CIC is enquiring about the timeline for Justice to deliver.

The following was provided to DMO:

1. Two pager: Overview of the Zero Tolerance for Barbaric Cultural Practices Act (Forced Marriage) with Carole Morency's e-mail explaining suggested changes.
2. Minister's Talking Points for Bill review;
3. DECK (English version)
4. Additional Qs and As for tabling
5. Clause-by-clause

Please let me know if anything else needs to be provided.

It would be imperative to receive all the necessary approvals at the latest tomorrow morning to give CIC some time to review and include any changes.

Louise Soyez
Analyst | Analyste
Cabinet Affairs Unit | Unité des affaires du Cabinet
Department of Justice Canada | Ministère de la Justice Canada
284 Wellington Street, EMB - 4248 | 284 rue Wellington, ÉCE - 4248
Ottawa (Ontario) K1A 0H8
tel. | tél.: (613) 946-6929
Fax | Télécopieur: 613-941-2279
cell: (613) 851-3964

louise.soyez@justice.gc.ca

From: Blackell, Gillian
Sent: September-29-14 3:54 PM
To: Soyez, Louise
Cc: Klineberg, Joanne; Hitch, Lisa
Subject: RE: EFM Bill

Hi Louise,

Did you receive the package from Carole with suggested changes? If so, we will need to get a copy of the suggested changes in order to co-ordinate with CIC as they have the lead on this file and these same documents are going up to their MO at the same time...

Thanks,
Gillian

Gillian Blackell, B.A., LL.B., LL.M.
Senior Legal Counsel / Avocate-conseil
Family, Children and Youth Section / Section de la famille, des enfants et des adolescents
Department of Justice Canada / Ministère de la Justice Canada
Tel. / tél. : (613) 954-1444
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E-mail / courriel : gillian.blackell@justice.gc.ca

This message and its attachments may contain information that is protected and exempt from disclosure under applicable law.
/ Cette communication peut contenir de l'information protégée et ne pouvant être divulguée selon la loi applicable en l'espèce.

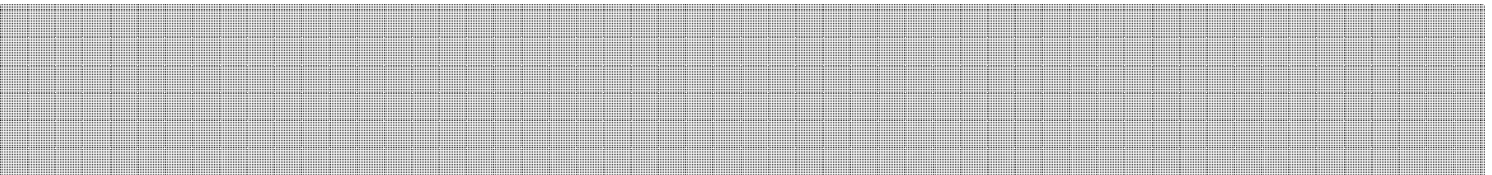
From: Morency, Carole
Sent: 2014 Sep 29 3:16 PM
To: Soyez, Louise
Cc: Klineberg, Joanne; Blackell, Gillian; Hébert, Nathalie; Melanson, Janice
Subject: EFM Bill

CIC –Overview of forth coming bill (2 pager) –

To explain my comment on the package (working from memory as I do not have a copy) – the 2nd page of this document made reference to the effect that there would be no "criminal record" unless/until there was a breach of the proposed new peace bond.

My point of clarification was to note that it would be more accurate to say that there would not be a criminal record of conviction unless the individual subject to the peace bond was convicted of breaching the peace bond.

The clarification is important as many people think "criminal record" is only referring to a judicial record of conviction when in fact, there is no statutory definition of "criminal record". Accordingly, the fact that police will have a peace bond entered into the CPIC system will mean that there is a "criminal" "record" of some sort about the existence of the peace bond (otherwise police could not enforce the peace bond when a breach is reported) but this is not a judicial record of conviction.



That said, the package will be useful for technical briefings and tabling etc... though I still found the Q&As to be quite long as well.

Carole E. Morency, B.A., LL.B.
Diploma Legislative Drafting / Diplôme de rédaction législative
Director General and Senior General Counsel /
Directrice générale et Avocate générale principale
Department of Justice Canada / Ministère de la justice Canada
Criminal Law Policy Section / Section de la politique en matière de droit pénal
East Memorial Building / Édifice commémoratif de l'Est
284 Wellington Street / 284, rue Wellington
Ottawa (Ontario) K1A 0H8
tel. / tél.: (613) 941-4044
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carole.morency@justice.gc.ca
Government of Canada / Gouvernement du Canada

APPROVAL / L'APPROBATION
Communications Br. / Direction des communications
(By hand / De personne à personne)

Title/Titre: Zero Tolerance for Barbaric Cultural Practices

Documents: Media Lines & Backgrounders (NOTE: SIG is coming)

Deadline / Échéancier: September 30, 2014

Ian W. McLeod

613-617-8327

Officer / Personne à contacter

Telephone / Téléphone

SUBMITTED FOR APPROVAL / SOUMISE POUR APPROBATION A

1) Deputy Director General Communications / Directeur (rice) général(e) des communications Comments/ Commentaires

Approved by
Approuvé par

Jeffrey Chapman

☐ Inform speech writer

Signature

Date Time/Heure

Sep 26/14 4:25

2) Sector Source(s) / Source(s) d'enseignements du secteur

Approved by
Approuvé par

Gillian Beckett
(For Elissalitt)

(see attached)
Signature

Date Time/Heure

Approved by
Approuvé par

Carole Floucy

Signature

Date Time/Heure

Sep 28/14 08:20h

3) Director General Communications / Directeur (rice) général(e) des communications

Approved by
Approuvé par

Sue Ann Saville

Signature

Date Time/Heure

Sep 29/14

4) ADM responsible / SMA compétent

Approved by
Approuvé par

Donald P. Cayoff

Signature

Date Time/Heure

Sep 30/2014

5) Deputy Minister / Sous-ministre

Approved by
Approuvé par

Alice Williams, P. M. R. P. M.

Signature

Date Time/Heure

Oct 1/14 11:00am

6) Minister / Ministre

Approved by
Approuvé par

Signature

Date Time/Heure

subject to
currents
MED, media
lines + backgrounder



BACKGROUND

Draft

BG 1 - An Overview of the Zero Tolerance for Barbaric Cultural Practices Act

In Canada, men and women are equal under the law. Canada's openness and generosity does not extend to early and forced marriage, polygamy or other types of barbaric cultural practices that tolerate any type of violence against women or girls, including spousal abuse, violence in the name of so-called "honour", or other, primarily gender-based violence. These crimes are severely punished under Canada's criminal laws.

To deliver on the Government of Canada's commitment to stand up for victims of violence and abuse and send a strong message to those in Canada and those wishing to come to Canada that barbaric cultural practices will not be tolerated on Canadian soil, the Government proposes to amend four federal statutes:

Immigration and Refugee Protection Act

Address polygamy in Canada through the creation of a new polygamy-specific inadmissibility in the *Immigration and Refugee Protection Act*, which would:

- Prohibit temporary residents and permanent residents from practising polygamy in Canada; and s.21(1)(a) s.21(1)(b)
- Provide for the removal of non-citizens who practise polygamy in Canada without the need for a *Criminal Code* conviction.

Civil Marriage Act

Make amendments to the *Civil Marriage Act* to:

Legislate across Canada two existing legal requirements for a valid marriage – the requirement for free and enlightened consent (proposed section 2.1), and the requirement for ending an existing marriage prior to entering another (proposed section 2.3). These legal requirements currently exist in federal legislation that applies in the Province of Quebec only (sections 5 and 7 of the *Federal Law–Civil Law Harmonization Act, No. 1*), and in the common law (court decisions) for residents of other provinces and territories.

The bill would also establish a new national minimum age for marriage of 16, below which no marriage could be contracted (proposed section 2.2). This legal requirement currently exists

only in federal legislation that applies in the Province of Quebec (section 6 of the *Federal Law-Civil Law Harmonization Act, No. 1*). The common law (court decisions) applying to residents of other provinces and territories is sometimes interpreted as setting a minimum age of 14 for boys and 12 for girls, and historically sometimes as low as age 7. This proposed amendment would provide equal protection to all Canadian children by setting the minimum age at age 16 across Canada.

Additional legal protections for children between the new minimum age for marriage and the age of majority, set by the province or territory of residence at 18 or 19 years of age, are found in provincial and territorial marriage laws. These laws currently require parental consent (and in some instances also the consent of a judge) to ensure that the child fully understands the legal consequences of marriage, in those exceptional circumstances where a child would be mature enough to marry. The Minister of Justice Canada has asked his provincial and territorial counterparts to consider making complementary amendments to their marriage laws to ensure that children are uniformly protected by requiring a judge to make the proper inquiries, in addition to parental consent, in the case of any marriage involving a child between the age of 16 and the age of majority.

Criminal Code

Amend the *Criminal Code* to provide additional protections building on the proposed amendments to the *Civil Marriage Act* to prevent forced or underage marriages. The proposed amendments would:

- amend the existing offence for a legally-authorized officiant who knowingly solemnizes a marriage contrary to provincial law (section 295) to clarify that this also includes a marriage that is contrary to federal law, including a forced marriage or a marriage under the age of 16 – this offence is punishable by up to two years in prison;
- create a new offence prohibiting the active and knowing participation in a forced marriage ceremony by any person, including parents or other family members of the person being forced to marry, or the performance of a forced marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.1) - this offence would be punishable by a maximum of five years imprisonment;
- create a new offence prohibiting the active and knowing participation in a marriage ceremony involving a person under the age of 16, by any person, including parents or other family members of the person who is underage, or the performance of an underage marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.2) - this offence would be punishable by a maximum of five years imprisonment;
- extend the existing offence of removing a child from Canada for the purpose of having certain offences committed abroad to include the removal of a child for the purpose of a forced marriage or a marriage under the age of 16 outside of Canada (proposed paragraph 273.3(1)(d)) – this offence is punishable by a maximum of five years' imprisonment; and
- introduce a new peace bond that gives the court power to impose conditions on a person where there are reasonable grounds to fear that a forced marriage or a marriage under the age of 16 will otherwise occur (proposed section 810.02).

The bill would also amend the *Criminal Code* to address concerns that the defence of provocation (section 232) has been raised in several so-called "honour" killing cases in Canada, in which accused persons who killed either their wives or their sister (along with their sister's fiancé) alleged that the killing was motivated by their perception that the victims had brought dishonour to them or their family through their conduct or choices, taking into account their culture's views about appropriate gender roles and behaviour.

The defence of provocation currently allows a person found to have committed murder (which carries a mandatory sentence of life in prison and minimum parole ineligibility periods) to seek a conviction of manslaughter instead (with no minimum sentence unless a firearm is used) by arguing that the victim's conduct provoked them to lose self-control and kill.

Currently, any conduct by the victim – including insults and other forms of offensive behaviour that are lawful – can potentially qualify as provocation if it is found to be sufficient to cause an ordinary person to lose self-control, the accused was not expecting it and the killing was sudden. The proposed amendment would limit the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family "honour" or reputation, cannot be used to reduce murder to manslaughter; only conduct by the victim that amounts to a relatively serious criminal offence (i.e. an offence under the *Criminal Code* punishable by at least 5 years in prison) could be argued to be "provocation" for the purposes of the defence.

Consequential amendments

Consequential amendments resulting from the above-mentioned changes will also be made to the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act*, primarily to include references to the new peace bond.



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

BACKGROUND

Draft

BG 4 - Key Federal Initiatives Protecting and Supporting Vulnerable Women and Girls from Early and Forced Marriage and Other Harmful Cultural Practices

The bill would complement existing Canadian initiatives, both at home and abroad, to put an end to cultural practices that go against Canadian values because they cause harm to women and girls, and prevent their full participation in society. These practices, which include early and forced marriage, "honour"-based violence and female genital mutilation/cutting, have no place in Canada's free and democratic society. Some of Canada's initiatives to end these practices are set out below.

Canada on the International Stage

Canada has made ending child, early and forced marriage (CEFM) a foreign policy and development priority and is intensifying programming and advocacy efforts to address child, early and forced marriage. For example:

- Canada spearheaded the initiative to establish the International Day of the Girl Child, which focused on child, early and forced marriage in 2012, its first year.
- In October 2013, Canada announced \$5 million in new money to address the causes and consequences of CEFM around the world. These funds were used for programs in Afghanistan, Ethiopia, Ghana, Somalia, and Zimbabwe.
- On July 4, 2014, Minister Baird announced that Canada is contributing \$20 million over two years to UNICEF toward ending child, early and forced marriage. The UNICEF project aims to accelerate the movement to end child marriage in Bangladesh, Burkina Faso, Ethiopia, Ghana, Yemen and Zambia by supporting efforts in these countries to strengthen programming and political support to end the practice.
- Also in July 2014, Canada committed institutional support to the efforts of the Royal Commonwealth Society to raise awareness in Commonwealth countries about the need to end CEFM.
- Canada has played an important role in bringing world attention and action to this issue of child, early and forced marriage. For example, for the second year, Canada and Zambia will lead a United General Assembly resolution on child, early and forced marriage in the fall of 2014.
- Canada contributes to efforts to combat female genital mutilation/cutting (FGM) by working with UN agencies, and bilaterally with other countries supporting projects to address violence against women and eliminate harmful cultural practices like FGM.

Canada at home

Canada has taken action to protect vulnerable Canadians, particularly women and girls, from early and forced marriage and other harmful cultural practices. For example:

Department of Justice Canada

- Justice Canada and Status of Women Canada co-chair an **interdepartmental working group** on early and forced marriage, "honour"-based violence and female genital mutilation/cutting. The working group has participation from 15 federal departments and agencies and acts as a focal point for collaborative actions.
- Since 2009, Justice Canada has held six **sector-specific workshops** on forced marriage and honour-based violence with police, Crowns, victim services, child protection officials and shelter workers, to assist in front-line capacity-building.
- Justice Canada also funded research papers on forced marriage and "honour" killings; included specific information on these forms of family violence in two public legal education pamphlets (one of which – *Abuse is Wrong in Any Language* – is available in 12 languages); and funded a variety of projects to prevent and respond to forced marriage and "honour"-based violence.
- Justice Canada operates an **emergency fund for Canadians who are victimized abroad** either through homicide, sexual assault, aggravated assault or assault with serious personal violence, including against a child.

Citizenship and Immigration Canada (CIC)

- Many **CIC-funded organizations** provide targeted programming designed for specific groups, including women. Newcomer women may benefit from blended or women-only workshops, offering an inclusive and open environment to learn and discuss job search strategies and basic information needed to obtain meaningful employment.
- In addition, **women-only language classes** are available for immigrant and refugee women. CIC funded language classes cover issues such as family violence, spousal abuse, women's rights, legal rights and responsibilities, and health care, and include bridging or referral to other available services in the community.
- Both Canada's citizenship study guide "**Discover Canada**" and the "**Welcome to Canada**" orientation guide were recently updated to reflect the fact that Canada's openness and generosity do not extend to harmful cultural practices such as forced marriage or other forms of gender-based family violence.
- CIC also disseminates the brochure "**Information for Sponsored Spouses or Partners**" to sponsored spouses and partners who are subject to the conditional permanent residence measure. The brochure provides information for those who are subject to the condition and who are victims of abuse or neglect, advising them that they do not have to

remain in an abusive situation and informing them how to contact CIC and others and where they can find help.

Department of Foreign Affairs, Trade and Development (DFATD)

- **Consular Services** are available **24 hours a day** to **Canadian victims** of forced marriage abroad. DFATD provides **information about consular assistance** available to travellers at risk of forced marriage on its travel.gc.ca website.
- Increased awareness building and concrete programming efforts to combat child, early and forced marriage from a human rights and international development perspective will also support its reduction domestically.

Status of Women Canada (SWC)

- SWC launched a **call for proposals in 2012** which focused on preventing and eliminating violence against women and girls including the specific area of violence committed in the name of "honour". They have also provided **\$2.8 M in funding since 2007 for forced marriage projects** involving funding NGOs to conduct a variety of projects related to forced marriage.

The Royal Canadian Mounted Police (RCMP)

- The RCMP has developed **on-line training on forced marriage and "honour"-based violence** for RCMP officers and plans to make it available to municipal police and other agencies through the Canadian Police Knowledge Network in 2014.

Health Canada/Public Health Agency of Canada (HC/PHAC)

- PHAC will develop guidance on harmful cultural practices for health care and social service professionals, and educational and awareness materials for community-based frontline workers, victims and their children.

Comment [A1]: We have asked OGD's for their input. Placeholder for now

For immediate release

Protecting Canadians from Barbaric Cultural Practices

October XX, 2014 — Ottawa — Citizenship and Immigration Canada Minister Chris Alexander today tabled in the Senate a bill aimed at strengthening our laws to prevent barbaric cultural practices from happening on Canadian soil.

Comment [A1]: TBC

The *Zero Tolerance for Barbaric Cultural Practices Act* sends a clear message to those coming to this country that harmful cultural practices are unacceptable in Canada. These practices are incompatible with Canadian values and will not be tolerated.

The Act would amend the *Immigration and Refugee Protection Act* (IRPA), the *Civil Marriage Act* and the *Criminal Code*. It would provide more protection and support for vulnerable Canadians and immigrants—primarily women and girls—including:

- Creating a new inadmissibility under IRPA that would render permanent residents and temporary residents inadmissible to Canada on the basis that they practise polygamy;
- Strengthening Canadian marriage laws by amending the *Civil Marriage Act* to codify nationally the existing legal requirements for free and enlightened consent for marriage, and for ending an existing marriage prior to entering another; and to establish a new national minimum age for marriage of 16;
- Helping to protect potential victims of early or forced marriages by creating a new specific court-ordered peace bond where there are grounds to fear that a person would commit a forced or early marriage offence, including mandatory passport surrenders to prevent a child from being taken out of the country;
- Criminalizing certain conduct related to early and forced marriage ceremonies in the *Criminal Code*, including the act of removing a child from Canada for the purpose of such marriages.
- Limiting the defence of provocation so that it would not apply in so-called "honour" killings and many spousal homicides; and
- Including consequential amendments to the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act* to include the new peace bond.

These changes build upon existing federal initiatives that are providing vital support, protection and services for immigrant women and girls.

Quick facts

- A study undertaken by the South Asian Legal Clinic of Ontario (SALCO) found 219 reported cases of forced marriages in Ontario between 2010 and 2012. Of these cases: 92 percent of the victims were female; 30 percent were aged between 12 and 18; 41 percent were permanent residents; and 44 percent were citizens of Canada.
- In 2011, the Supreme Court of British Columbia upheld the constitutionality of the *Criminal Code* prohibition on polygamy (s.293) and found it consistent with the *Canadian Charter of Rights and Freedoms*.

Canada

- Globally, between 2004 and 2014, an estimated 100 million girls will have been forced to marry before their 18th birthday.

Quotes

s.21(1)(a)

s.21(1)(b)

"With the *Zero Tolerance for Barbaric Cultural Practices Act*, we are strengthening our laws to protect Canadians and newcomers to Canada from barbaric cultural practices. We are sending a strong message to those in Canada and those who wish to come to Canada that we will not tolerate cultural traditions in Canada that deprive individuals of their human rights. Our government will continue to stand up for all victims of violence and abuse and take necessary action to prevent these practices from happening on Canadian soil."

Chris Alexander, Canada's Citizenship and Immigration Minister

"This government has been clear in its stand against polygamy and other barbaric practices that constitute gender-based violence. These important legislative changes build on the work that is already being done to make it clear to all Canadians that family violence, including violence committed in the name of so-called "honour", is unacceptable. This package includes important tools to prevent early and forced marriages and to protect victims."

Peter MacKay, Minister of Justice and Attorney General of Canada

<Quote from Minister Leitch>

Comment [A2]: To be provided by
SWC

<Quote from Minister Ambrose>

Comment [A3]: To be provided by
PHAC/HC

Related products

Backgrounders:

- 1 – Strengthening Laws to Protect Canadians from Barbaric Practices
- 2 – *Zero Tolerance for Barbaric Cultural Practices Act* – Polygamy and changes to the IRPA
- 3 – Why we need the *Zero Tolerance for Barbaric Cultural Practices Act* – research and cases
- 4 – Key federal initiatives protecting and supporting vulnerable women and girls from early and forced marriage and other harmful cultural practices
- 5 – What will the *Zero Tolerance for Barbaric Cultural Practices Act* do? The current approach versus proposed new approach (infographic)

Associated links

CIC:

Welcome to Canada: <http://www.cic.gc.ca/english/resources/publications/welcome/index.asp>

Discover Canada:

<http://www.cic.gc.ca/english/resources/publications/discover/index.asp>

Information for sponsored spouses or partners:

<http://www.cic.gc.ca/english/resources/publications/family-sponsorship.asp>

Suggestions from OGDs?

Department of Justice Canada:

Abuse is Wrong in any language

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Photos of Minister Alexander available at:

<http://www.cic.gc.ca/english/department/media/photos/index.asp>

– 30 –

Contacts

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Media Relations

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Media Relations
Department of Justice
613-957-4207

Chapman, Jeffrey

From: McLeod, Ian W (COMMS)
Sent: 2014-Oct-03 1:27 PM
To: Chapman, Jeffrey
Subject: RE: ZTBCP Act - Revised Comm Products (NR & 5 x BG)

Quite so, on both counts.

Ian W. McLeod
Policy Communications | Communication des politiques
Department of Justice Canada | Ministère de la Justice du Canada
iwmcLeod@justice.gc.ca
Telephone | Téléphone 613-617-8327
Facsimile | Télécopieur 613-954-0811
Government of Canada | Gouvernement du Canada

From: Chapman, Jeffrey
Sent: October-03-14 1:27 PM
To: McLeod, Ian W (COMMS); Blackell, Gillian
Subject: RE: ZTBCP Act - Revised Comm Products (NR & 5 x BG)

I had to think hard about that acronym!!! This is the EFM bill, by it's official name, am I right? So now a PM annct!?!?

From: McLeod, Ian W (COMMS)
Sent: 2014-Oct-03 1:09 PM
To: Blackell, Gillian; Chapman, Jeffrey
Subject: FW: ZTBCP Act - Revised Comm Products (NR & 5 x BG)

News on the announcement.

Ian W. McLeod
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s.21(1)(a)

From: Branswell, Jack [<mailto:Jack.Branswell@cic.gc.ca>]
Sent: October-03-14 1:07 PM
To: McLeod, Ian W (COMMS); Asbil, Andrea
Cc: Kennedy, Jacqueline
Subject: Re: ZTBCP Act - Revised Comm Products (NR & 5 x BG)

Ian we now have confirmation that this is a go for Thursday. PM lead.

From: McLeod, Ian W (COMMS) [<mailto:IanW.McLeod@justice.gc.ca>]
Sent: Friday, October 03, 2014 01:05 PM
To: Asbil, Andrea
Cc: Branswell, Jack; Kennedy, Jacqueline

Subject: RE: ZTBCP Act - Revised Comm Products (NR & 5 x BG)

Well, I'll see where we get by COB today and let you know.

Ian W. McLeod
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Government of Canada | Gouvernement du Canada

From: Asbil.Andrea [<mailto:Andrea.Asbil@cic.gc.ca>]
Sent: October-03-14 1:04 PM
To: McLeod, Ian W (COMMS)
Cc: Branswell.Jack; Kennedy.Jacqueline
Subject: RE: ZTBCP Act - Revised Comm Products (NR & 5 x BG)

Ian – it's up to you in terms of approvals at this stage. My caution would be that our MINO may make changes to any and all of these products – and they won't likely comment on them before Monday...

From: McLeod, Ian W (COMMS) [<mailto:IanW.McLeod@justice.gc.ca>]
Sent: October 3, 2014 12:33 PM
To: Asbil.Andrea
Cc: Branswell.Jack; Kennedy.Jacqueline
Subject: RE: ZTBCP Act - Revised Comm Products (NR & 5 x BG)

Wrapping up policy input for BK5 now, which I'll roll into the new version when it's ready.

Just started circulating these – are you looking for ADM or full approvals on them? My only concern at this point is the cases and research backgrounder, as it seems like something that should be more responsive.

Ian W. McLeod
Policy Communications | Communication des politiques
Department of Justice Canada | Ministère de la Justice du Canada
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Telephone | Téléphone 613-617-8327
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Government of Canada | Gouvernement du Canada

From: Asbil.Andrea [<mailto:Andrea.Asbil@cic.gc.ca>]
Sent: October-03-14 11:41 AM
To: McLeod, Ian W (COMMS)
Cc: Branswell.Jack; Kennedy.Jacqueline
Subject: ZTBCP Act - Revised Comm Products (NR & 5 x BG)
Importance: High

Ian,

Attached are the latest versions of the news release and five backgrounders. I have attempted to combine and add in content you provided yesterday, where it seemed appropriate. Please have a look and let me know if you have any concerns. In terms of status:

- We still need your content and Minister's quote for the news release, as well as 1-2 quick facts and "associated Links".
- We still need your input into backgrounder #5
- I am still awaiting input from SWC, RCMP and PHAC for BG #4. They have all said they'd provide it today. Please keep in mind that as I have reached out to them for this input I would like to include it in the BG.

Can you give me an ETA in terms of your input for the news release and BG #5?

Thanks,

Andrea Asbil
Citizenship and Immigration Canada | Citoyenneté et Immigration Canada
Tel | Tél – 613-437-7612



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

BACKGROUND

Draft

BG 5 - A comparative before and after view of changes to the *Immigration and Refugee Protection Act (IRPA)*, the *Civil Marriage Act*, the *Criminal Code* and Consequential Amendments being proposed in the *Zero Tolerance for Barbaric Cultural Practices Act*

BEFORE	AFTER
Polygamy – Current Admissibility Provisions under IRPA	Polygamy – proposed amendments to admissibility provisions under IRPA
<p>Permanent Resident</p> <p>In the permanent residency stream, a foreign national, when entering Canada and becoming a permanent resident, is permitted to have only one spouse. This requires an individual who is practising polygamy to convert their first marriage into a monogamous relationship.</p> <p>That said, as polygamous marriages are legal in certain countries, some permanent resident applicants who tried to enter Canada having converted their first marriage to monogamy may try to circumvent the system by having additional spouses submit their applications separately, at a later date, so that they can resume the practice of polygamy in Canada.</p> <p>In Canada, the permanent resident could only be found inadmissible for practising polygamy if they are convicted in Canada of the criminal offence described under s. 293 of the <i>Criminal Code</i> and receive a term of imprisonment of more than six months. A permanent resident may also be found inadmissible for misrepresentation under immigration law, if they lied about</p>	<p>In the permanent residency stream, a foreign national who practices polygamy would still be required to convert their first polygamous marriage to a monogamous one before being eligible to become a permanent resident.</p> <p>However, once in Canada, a permanent resident who begins or resumes practising polygamy would be found inadmissible under the new provision. Also, as IRPA would have a specific provision for polygamy, removal proceedings could be initiated without either a criminal conviction or a finding of misrepresentation.</p>

<p>being in a polygamous relationship when they became a permanent resident.</p>	
<p>Temporary Resident A temporary resident who practises polygamy in their country of origin is generally allowed to enter with only one spouse at the time of seeking entry.</p>	<p>A foreign national seeking temporary residence who practices polygamy in their country of origin would be allowed to enter Canada only if they are travelling without any of their spouses. The physical presence in Canada of two individuals from a polygamous relationship will be considered as "practising polygamy in Canada".</p>
<p>Civil Marriage Act</p>	
<p>Legal Requirements to Marry The legal requirement for free and enlightened consent to marriage is currently contained in federal legislation that applies in the Province of Quebec only, and in the common law (court decisions) for residents of other provinces and territories.</p> <p>The minimum age of 16 for marriage, below which no marriage can be contracted, is currently contained in federal legislation that applies in the Province of Quebec only. For the other provinces and territories, the minimum age is not currently provided for in federal legislation and there is some debate about the minimum age in the common law between age twelve for girls and fourteen for boys, and age seven.</p> <p>The legal clarification that any previous marriage must be dissolved prior to a new marriage is currently contained in federal legislation that applies in the Province of Quebec only. (The requirement for monogamy already exists nationally in section 4 of the <i>Civil Marriage Act</i> and is reflected in sections 290, 291 & 293 of the <i>Criminal Code</i>.)</p>	<p>The legal requirement for free and enlightened consent to marriage would now apply nationally to all Canadian residents.</p> <p>A new national minimum age of 16 for marriage, below which no marriage can be contracted, would now apply to all Canadian residents. Legislation in the provinces and territories may set out additional requirements, such as parental consent and consent of the court, for marriages between the national minimum age and the age of majority.</p> <p>The legal clarification that any previous marriage must be dissolved prior to a new marriage would now apply nationally to all Canadian residents.</p>
<p>Criminal Code</p>	
<p>Early and Forced Marriage Family members can employ a range of techniques to force a marriage onto an unwilling person, both in the time leading</p>	<p>Family members and others would be subject to prosecution where they actively and knowingly participate in a forced or early marriage ceremony, such as by</p>

up to the marriage and possibly also in connection with the marriage ceremony itself. Family members may also engage in similar conduct to cause an underage child to marry. Wherever the conduct involved amounts to an existing criminal offence – such as uttering threats, assault, or forcible confinement – it is subject to prosecution.

Removal of Child from Canada

In a situation of a forced or early marriage, family members could be prosecuted for taking steps to remove a young person from Canada if the Crown could prove that they did so with the knowledge that, following a forced or early marriage ceremony abroad, the child would be subjected to a sexual offence.

Peace Bond

Where there are reasonable grounds to fear that a person – including family members – will cause personal injury to another person, they can be brought to court and ordered to enter into a recognizance to keep the peace and be of good behaviour. Other conditions can be imposed, including that the person have no contact with the person who fears for their safety. A person subject to a peace bond could be prosecuted if they breach the order.

Provocation Defence

A person who is found to have committed murder can raise the defence of provocation where they killed the victim in the "heat of passion" brought on by a "wrongful act or insult" from the victim that would be sufficient to cause an ordinary person to lose self-control. Individuals who are prosecuted for murder in so-called "honour" killings can raise the defence, if they allege that the victim's conduct was so

transporting an unwilling or underage daughter to the ceremony or acting as a legal witness. A person who knowingly performs a forced or early marriage ceremony would also be subject to prosecution.

Family members and others would be subject to prosecution where they take steps to **remove a young person from Canada specifically with the intent that they be subjected to a forced or early marriage abroad**. The Crown would not have to prove that the family knew there would be a sexual offence following the marriage.

Where there are reasonable grounds to believe that a person will specifically aid or participate in a forced or early marriage ceremony involving someone else (for example, their child), or will take a young person out of Canada for the purposes of a forced or early marriage ceremony abroad, they could be brought to court and ordered to enter into a **recognizance** to keep the peace and be of good behaviour. A court would be empowered to make orders that could be particularly useful in specifically preventing an early or forced marriage, whether in Canada or abroad, such as ordering the person to surrender travel documents, to refrain from making arrangements or agreements in relation to the marriage, or to participate in a family violence counselling program.

The **provocation** defence would only be available to an accused found guilty of murder where the conduct of the victim that provoked the accused to kill amounted to a criminal offence punishable by 5 years or more in prison could qualify.

Adjusted format so that new + old line up

<p>insulting and offensive to them and/or to their family's reputation that it caused them to kill in a state of rage.</p> <p>Where successful, provocation is a defence for murder that results in a conviction for manslaughter. Manslaughter carries a maximum punishment of life in prison, and no minimum punishment except if a firearm was used (4 years).</p>	<p>A victim's personal choices about lifestyle or dating or marriage partners, including where such choices were conveyed in a manner perceived as insulting, could not qualify as provocation for the purposes of providing a defence to murder.</p>
<p>Consequential Amendments</p>	
<p>Criminal Code Paragraph 150.1(2.1)(b) of the <i>Criminal Code</i> provides an exception from criminal liability for what would otherwise be the listed sexual offences involving a child between the ages of 14 and 16 years if the complainant and the accused are married.</p> <p>Prisons and Reformatories Act Section 2 of the <i>Prisons and Reformatories Act</i> provides a definition of "prisoner", which in turn permits such persons to be lawfully held in a provincial jail.</p> <p>Youth Criminal Justice Act Subsection 14(2) of the <i>Youth Criminal Justice Act</i> gives jurisdiction to a youth justice court to make orders against young persons under the peace bond provisions of the Code.</p> <p>Subsection 142(1) of the <i>Youth Criminal Justice Act</i> provides that the provisions of Part XXVII of the <i>Criminal Code</i> apply to proceedings in respect of peace bonds against young persons.</p>	<p>The Bill proposes to repeal paragraph 150.1(2.1)(b) of the <i>Criminal Code</i>, to match the proposed amendments to the <i>Civil Marriage Act</i>, which will prohibit marriages below the age of 16.</p> <p>A person who breaches conditions imposed as part of a peace bond, including the new peace bond where there is a fear that they may commit a forced or early marriage offence, could be lawfully held in a provincial jail.</p> <p>A youth justice court would also have jurisdiction to impose a new peace bond where there is a fear that a young person may commit a forced or early marriage offence.</p> <p>The new peace bond to prevent forced or early marriage, when ordered against a young person, would be governed by the provisions of Part XXVII of the <i>Criminal Code</i>, as is the case for other peace bonds.</p>



BACKGROUND

Draft

BG 3 – Why we need the *Zero Tolerance for Barbaric Cultural Practices Act*

–Research and Cases–

To deliver on the commitment in the 2013 Speech from the Throne, the Government introduced a comprehensive package of legislative amendments on October xx, 2014, to ensure that early and forced marriage and other harmful cultural practices, including polygamy and so-called honour-based violence, do not occur on Canadian soil and that vulnerable Canadians and those coming to Canada are protected from these practices.

Newcomer and immigrant women can face additional barriers in protecting themselves and seeking assistance when compared to women born in Canada. These challenges may include: isolation, lack of language proficiency; lack of awareness of rights; fear of immigration consequences; lack of economic independence and concern about retaliation for seeking help or alerting the authorities.

Early and forced marriage, polygamy and so-called “honour” based violence can have severe and even fatal consequences. These cultural practices, which go against Canadian values and many of which are in violation of Canada’s international human rights commitments, will not be tolerated in Canada.

Research and these cases, among others, provide clear examples of the need to ensure that the immigration system does not facilitate the occurrence of such barbaric practices on Canadian soil:

There are more than 1,000 residents in the polygamous community of Bountiful, B.C., some of whom may be foreign nationals and are alleged to have entered Canada as visitors from the United States to “marry” Canadian residents. Winston Blackmore, the former leader of the Fundamentalist Church of Jesus Christ of the Latter-Day Saints in Bountiful has publicly declared Canada a “safe haven for polygamists”.

In August 2013, a study by the South Asian Legal Clinic of Ontario found that 219 forced marriage cases were dealt with by Ontario service providers from 2010 to 2012.



In 2000, a young British Columbia woman, Jaswinder Sidhu, was murdered because she chose to secretly marry the man she loved, and not the person chosen for her by her family.

In 2009, Hasibullah Sadiqi was convicted of the 2006 first degree murder of his sister, Khātera, and her fiancé Feroz Mangal, who had become engaged without the prior approval of her father. Mr. Sadiqi raised the defence of provocation, alleging that he killed his sister and her fiancé in the "heat of passion" in response to things said by Mr. Mangal that Mr. Sadiqi found offensive toward his father and their family. The defence was rejected.

On April 17, 2009, a 19 year old Montréal woman, Zainab Shafia, fled her family home because her parents were trying to force her to marry a man she did not want to marry. Three months later, her body and the bodies of her two sisters and their father's first wife from a polygamous marriage, were found in a Kingston canal lock.

On January 2, 2010, a young Calgary woman was beaten by her uncle and three cousins for refusing to marry the man her uncle had chosen for her.



Citizenship and Immigration Minister Chris Alexander held three roundtables across Canada in January 2014 on violence against women in the immigration context.

A 2014 CIC questionnaire sent by Citizenship and Immigration Canada to Canadian missions abroad showed that:

- Victims of suspected cases of forced marriage are usually female members of the Family Class or Refugees;
- Certain missions have seen cases of early marriage, primarily in the Family Class. Young spouses are generally females from rural or remote areas with lower levels of education and coming from low socio-economic backgrounds.

The Department of Foreign Affairs, Trade and Development has reported approximately 100 requests for consular assistance in forced marriage cases since 2009.





BACKGROUND

Draft

BG 2 - Zero Tolerance for Barbaric Cultural Practices Act – Polygamy and changes to the Immigration and Refugee Protection Act

A polygamous marriage is defined as one in which an individual has more than one spouse at the same time. It is an offence, under section 293 of the *Criminal Code*, to practise polygamy or enter into a polygamous union in Canada. The constitutionality of the provision was upheld by the Supreme Court of British Columbia in 2011.

There is an increasing global consensus that polygamy is fundamentally harmful to women, children and the men who practise it, and to the wider society, because it creates great potential for the exploitation and abuse of female spouses and underage girls. Human rights and women's rights organizations have consistently called for the abolition of polygamy. In spite of this, some countries allow such practices and others, like Canada, face challenges in eliminating it.

The *Zero Tolerance for Barbaric Cultural Practices Act* proposes the creation of a new inadmissibility for polygamy in the *Immigration and Refugee Protection Act* (IRPA).

This provision would increase the Government of Canada's ability to prevent polygamy from occurring in Canada. While current IRPA provisions require foreign nationals wishing to become permanent residents to have only one spouse, once in Canada it is difficult to find these individuals inadmissible. A criminal conviction or finding of misrepresentation is currently required before a person practicing polygamy can be found inadmissible.

The changes would mean that a polygamist permanent resident or foreign national who is or will be physically present in Canada with even one of their polygamous spouses would be considered to be practising polygamy in Canada. The permanent resident or foreign national could be found inadmissible *on that basis alone*, without requiring evidence that the person misrepresented their situation or has a criminal conviction.

The new inadmissibility would apply in both the temporary and permanent immigration streams. While in the permanent stream, permanent residents will be required to convert their first polygamous marriage to a monogamous marriage prior to being permitted to immigrate with one spouse. In the temporary stream, visitors, students and workers who practise polygamy abroad would be admissible to Canada only as long as they travel without any of their spouses. Those who were to come with even one spouse, or join a polygamous spouse in Canada, would be considered to be practising polygamy on Canadian soil and would be inadmissible under IRPA.

Savard, Angela

From: McLeod, Ian W (COMMS)
Sent: 2014-Oct-01 12:00 PM
To: Nesbitt, Scott
Subject: Zero Tolerance for Barbaric Cultural Practices - FYI on language change

Tracking:	Recipient	Read
	Nesbitt, Scott	Read: 2014-10-01 12:05 PM

Hi Scott,

After discussion with CLPS and FCY contacts, we've come up with "To demonstrate government action on its Speech from the Throne commitment to ensure that barbaric cultural practices are not tolerated on Canadian soil and that vulnerable Canadians are protected from these practices."

Thanks,
Ian

Ian W. McLeod
Senior Communications Advisor | Conseiller principal en communications
Policy Communications | Communication des politiques
Communications Branch | Direction des communications
Department of Justice Canada | Ministère de la Justice du Canada
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Government of Canada | Gouvernement du Canada

APPROVAL SLIP / FICHE D'APPROBATION
Communications Branch / Direction des communications
(By hand / De personne à personne)

Title/Titre: Zero Tolerance for Harmful Cultural Practices

Documents: IR 5 Backgrounders

Deadline / Échéancier: Wednesday, October 8, 2014

Ian W. Nichol

Officer / Personne à contacter

613-617-8327
Telephone / Téléphone

SUBMITTED FOR APPROVAL / SOUMISE POUR APPROBATION A

1) Deputy Director General Communications / Directeur (rice) général(e) des communications Comments/ Commentaires

Approved by Jeffrey Chapman

Approuvé par

☐ Inform speech writer

[Signature]
Signature

03/10/14 4:50
Date Time/Heure

2) Sector Source(s) / Source(s) de renseignements du secteur

Approved by Elissa Lief

Approuvé par

(previously reviewed by
William Blackall / Elissa Lief)

[Signature]
Signature

[Signature]
Date Time/Heure

Approved by Carol Torrey

Approuvé par

(previously reviewed
by Joanne Klineberg)

[Signature]
Signature

Oct 6/14 15:10h
Date Time/Heure

with noted
corrections

3) Director General Communications / Directeur (rice) général(e) des communications

Approved by Suzanne Saville

Approuvé par

[Signature]
Signature

Oct 7 2/2014
Date Time/Heure

4) ADM responsible / SMA competent

Approved by Donald Piragoff

Approuvé par

[Signature]
Signature

8 Oct 2014
Date Time/Heure

Office of

5) Deputy Minister / Sous-ministre

Approved by Scott Nesbitt

Approuvé par

[Signature]
Signature

Oct 8/14 4:55pm
Date Time/Heure

w/ noted
comments

6) Minister / Ministre

Approved by

Approuvé par

[Signature]
Signature

[Signature]
Date Time/Heure

For immediate release

Protecting Canadians from Barbaric Cultural Practices

October XX, 2014 — Ottawa — Citizenship and Immigration Canada Minister Chris Alexander today tabled in the Senate a bill aimed at strengthening our laws to prevent barbaric cultural practices from happening on Canadian soil.

Comment [A1]: TBC

The *Zero Tolerance for Barbaric Cultural Practices Act* sends a clear message to those coming to this country that harmful cultural practices are unacceptable in Canada. These practices are incompatible with Canadian values and will not be tolerated.

The Act would amend the *Immigration and Refugee Protection Act (IRPA)*, the *Civil Marriage Act* and the *Criminal Code*. It would provide more protection and support for vulnerable Canadians and immigrants—primarily women and girls—including:

- Creating a new inadmissibility under IRPA that would render permanent residents and temporary residents inadmissible to Canada on the basis that they practise polygamy;
- Strengthening Canadian marriage laws by amending the *Civil Marriage Act* to codify nationally the existing legal requirements for free and enlightened consent for marriage, and for ending an existing marriage prior to entering another; and to establish a new national minimum age for marriage of 16;
- Helping to protect potential victims of early or forced marriages by creating a new specific court-ordered peace bond where there are grounds to fear that a person would commit a forced or early marriage offence, including mandatory passport surrenders to prevent a child from being taken out of the country;
- Criminalizing certain conduct related to early and forced marriage ceremonies in the *Criminal Code*, including the act of removing a child from Canada for the purpose of such marriages.
- Limiting the defence of provocation so that it would not apply in so-called “honour” killings and many spousal homicides; and
- Including consequential amendments to the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act* to include the new peace bond, and to the *Federal Law–Civil Law Harmonization Act, No. 1*.

These changes build upon existing federal initiatives that are providing vital support, protection and services for immigrant women and girls.

Quick facts

- A study undertaken by the South Asian Legal Clinic of Ontario (SALCO) found 219 reported cases of forced marriages in Ontario between 2010 and 2012. Of these cases: 92 percent of the victims were female; 30 percent were aged between 12 and 18; 41 percent were permanent residents; and 44 percent were citizens of Canada.

Canada

- In 2011, the Supreme Court of British Columbia upheld the constitutionality of the *Criminal Code* prohibition on polygamy (s.293) and found it consistent with the *Canadian Charter of Rights and Freedoms*.
- Globally, between 2004 and 2014, an estimated 100 million girls will have been forced to marry before their 18th birthday.

Quotes

"With the *Zero Tolerance for Barbaric Cultural Practices Act*, we are strengthening our laws to protect Canadians and newcomers to Canada from barbaric cultural practices. We are sending a strong message to those in Canada and those who wish to come to Canada that we will not tolerate cultural traditions in Canada that deprive individuals of their human rights. Our government will continue to stand up for all victims of violence and abuse and take necessary action to prevent these practices from happening on Canadian soil."

Chris Alexander, Canada's Citizenship and Immigration Minister

"This government has been clear in its stand against polygamy and other barbaric practices that constitute gender-based violence. These important legislative changes build on the work that is already being done to make it clear to all Canadians that family violence, including violence committed in the name of so-called "honour", is unacceptable. This package includes important tools to prevent early and forced marriages and to protect victims."

Peter MacKay, Minister of Justice and Attorney General of Canada

<Quote from Minister Leitch>

Comment [A2]: To be provided by
SWC

<Quote from Minister Ambrose>

Comment [A3]: To be provided by
PHAC/HC

Related products

Backgrounders:

- 1 – Strengthening Laws to Protect Canadians from Barbaric Practices
- 2 – *Zero Tolerance for Barbaric Cultural Practices Act* – Polygamy and changes to the IRPA
- 3 – Why we need the *Zero Tolerance for Barbaric Cultural Practices Act* – research and cases
- 4 – Key federal initiatives protecting and supporting vulnerable women and girls from early and forced marriage and other harmful cultural practices
- 5 – What will the *Zero Tolerance for Barbaric Cultural Practices Act* do? The current approach versus proposed new approach (infographic)

Associated links

CIC:

Welcome to Canada: <http://www.cic.gc.ca/english/resources/publications/welcome/index.asp>

Discover Canada:

<http://www.cic.gc.ca/english/resources/publications/discover/index.asp>

Information for sponsored spouses or partners:

<http://www.cic.gc.ca/english/resources/publications/family-sponsorship.asp>

Suggestions from OGDs?

Comment [A4]: OGD's - do you have links to add?

Department of Justice Canada:

Abuse is Wrong in any language

Photos of Minister Alexander available at:

<http://www.cic.gc.ca/english/department/media/photos/index.asp>

- 30 -

Contacts

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BACKGROUND

Draft

BG 1 - An Overview of the Zero Tolerance for Barbaric Cultural Practices Act

In Canada, men and women are equal under the law. Canada's openness and generosity does not extend to early and forced marriage, polygamy or other types of barbaric cultural practices that tolerate any type of violence against women or girls, including spousal abuse, violence in the name of so-called "honour", or other, primarily gender-based violence. These crimes are severely punished under Canada's criminal laws.

To deliver on the Government of Canada's commitment to stand up for victims of violence and abuse and send a strong message to those in Canada and those wishing to come to Canada that barbaric cultural practices will not be tolerated on Canadian soil, the Government proposes to amend four federal statutes:

Immigration and Refugee Protection Act

Address polygamy in Canada through the creation of a new polygamy-specific inadmissibility in the *Immigration and Refugee Protection Act*, which would:

- Prohibit temporary residents and permanent residents from practising polygamy in Canada; and
- Provide for the removal of non-citizens who practise polygamy in Canada without the need for a *Criminal Code* conviction.

Civil Marriage Act

Make amendments to the *Civil Marriage Act* to:

Legislate across Canada two existing legal requirements for a valid marriage – the requirement for free and enlightened consent (proposed section 2.1), and the requirement for ending an existing marriage prior to entering another (proposed section 2.3). These legal requirements currently exist in federal legislation that applies in the Province of Quebec only (sections 5 and 7 of the *Federal Law–Civil Law Harmonization Act, No. 1*), and in the common law (court decisions) for residents of other provinces and territories.

The bill would also establish a new national minimum age for marriage of 16, below which no marriage could be contracted (proposed section 2.2). This legal requirement currently exists

only in federal legislation that applies in the Province of Quebec (section 6 of the *Federal Law—Civil Law Harmonization Act, No. 1*). The common law (court decisions) applying to residents of other provinces and territories is sometimes interpreted as setting a minimum age of 14 for boys and 12 for girls, and historically sometimes as low as age 7. This proposed amendment would provide equal protection to all Canadian children by setting the minimum age at age 16 across Canada.

Additional legal protections for children between the new minimum age for marriage and the age of majority, set by the province or territory of residence at 18 or 19 years of age, are found in provincial and territorial marriage laws. These laws currently require parental consent (and in some instances also the consent of a judge) to ensure that the child fully understands the legal consequences of marriage, in those exceptional circumstances where a child would be mature enough to marry. The Minister of Justice Canada has asked his provincial and territorial counterparts to consider making complementary amendments to their marriage laws to ensure that children are uniformly protected by requiring a judge to make the proper inquiries, in addition to parental consent, in the case of any marriage involving a child between the age of 16 and the age of majority.

Criminal Code

Amend the *Criminal Code* to provide additional protections building on the proposed amendments to the *Civil Marriage Act* to prevent forced or underage marriages. The proposed amendments would:

- amend the existing offence for a legally-authorized officiant who knowingly solemnizes a marriage contrary to provincial law (section 295) to clarify that this also includes a marriage that is contrary to federal law, including a forced marriage or a marriage under the age of 16 – this offence is punishable by up to two years in prison;
- create a new offence prohibiting the active and knowing participation in a forced marriage ceremony by any person, including parents or other family members of the person being forced to marry, or the performance of a forced marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.1) - this offence would be punishable by a maximum of five years imprisonment;
- create a new offence prohibiting the active and knowing participation in a marriage ceremony involving a person under the age of 16, by any person, including parents or other family members of the person who is underage, or the performance of an underage marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.2) - this offence would be punishable by a maximum of five years imprisonment;
- extend the existing offence of removing a child from Canada for the purpose of having certain offences committed abroad to include the removal of a child for the purpose of a forced marriage or a marriage under the age of 16 outside of Canada (proposed paragraph 273.3(1)(d)) – this offence is punishable by a maximum of five years' imprisonment; and
- introduce a new peace bond that gives the court power to impose conditions on a person where there are reasonable grounds to fear that a forced marriage or a marriage under the age of 16 will otherwise occur (proposed section 810.02).

The bill would also amend the *Criminal Code* to address concerns that the defence of provocation (section 232) has been raised in several so-called "honour" killing cases in Canada, in which accused persons who killed either their wives or their sister (along with their sister's fiancé) alleged that the killing was motivated by their perception that the victims had brought dishonour to them or their family through their conduct or choices, taking into account their culture's views about appropriate gender roles and behaviour.

The defence of provocation currently allows a person found to have committed murder (which carries a mandatory sentence of life in prison and minimum parole ineligibility periods) to seek a conviction of manslaughter instead (with no minimum sentence unless a firearm is used) by arguing that the victim's conduct provoked them to lose self-control and kill.

Currently, any conduct by the victim – including insults and other forms of offensive behaviour that are lawful – can potentially qualify as provocation if it is found to be sufficient to cause an ordinary person to lose self-control, the accused was not expecting it and the killing was sudden. The proposed amendment would limit the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family "honour" or reputation, cannot be used to reduce murder to manslaughter; only conduct by the victim that amounts to a relatively serious criminal offence (i.e. an offence under the *Criminal Code* punishable by at least 5 years in prison) could be argued to be "provocation" for the purposes of the defence.

Consequential amendments

Consequential amendments resulting from the above-mentioned changes will also be made to the *Federal Law-Civil Law Harmonization Act, No. 1*, the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act*, primarily to include references to the new peace bond.

For immediate release

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Comment [A1]: TBC

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- Creating a new inadmissibility under IRPA that would render permanent residents and temporary residents inadmissible to Canada on the basis that they practice polygamy;
- Strengthening Canadian marriage laws by amending the *Civil Marriage Act* to codify nationally the existing legal requirements for free and enlightened consent for marriage, and for ending an existing marriage prior to entering another; and to establish a new national minimum age for marriage of 16;
- Helping to protect potential victims of early or forced marriages by creating a new specific court-ordered peace bond where there are grounds to fear that a person would commit a forced or early marriage offence, including mandatory passport surrenders to prevent a child from being taken out of the country;
- Criminalizing certain conduct related to early and forced marriage ceremonies in the *Criminal Code*, including the act of removing a child from Canada for the purpose of such marriages.
- Limiting the defence of provocation so that it would not apply in so-called "honour" killings and many spousal homicides; and
- Including consequential amendments to the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act* to include the new peace bond, and to the *Federal Law–Civil Law Harmonization Act, No. 1*.

These changes build upon existing federal initiatives that are providing vital support, protection and services for immigrant women and girls.

Quick facts

Comment [A2]: DOJ /others
suggestions for 1 2 Quick Facts?

- A study undertaken by the South Asian Legal Clinic of Ontario (SALCO) found 219 reported cases of forced marriages in Ontario between 2010 and 2012. Of these cases: 92 percent of the victims were female; 30 percent were aged between 12 and 18; 41 percent were permanent residents; and 44 percent were citizens of Canada.

Canada

- In 2011, the Supreme Court of British Columbia upheld the constitutionality of the *Criminal Code* prohibition on polygamy (s.293) and found it consistent with the *Canadian Charter of Rights and Freedoms*.
- Globally, between 2004 and 2014, an estimated 100 million girls will have been forced to marry before their 18th birthday.

Quotes

"With the *Zero Tolerance for Barbaric Cultural Practices Act*, we are strengthening our laws to protect Canadians and newcomers to Canada from barbaric cultural practices. We are sending a strong message to those in Canada and those who wish to come to Canada that we will not tolerate cultural traditions in Canada that deprive individuals of their human rights. Our government will continue to stand up for all victims of violence and abuse and take necessary action to prevent these practices from happening on Canadian soil."

Chris Alexander, Canada's Citizenship and Immigration Minister

"This government has been clear in its stand against polygamy and other barbaric practices that constitute gender-based violence. These important legislative changes build on the work that is already being done to make it clear to all Canadians that family violence, including violence committed in the name of so-called "honour", is unacceptable. This package includes important tools to prevent early and forced marriages and to protect victims."

Peter MacKay, Minister of Justice and Attorney General of Canada

<Quote from Minister Leitch>

Comment [A3]: To be provided by
SWC

<Quote from Minister Ambrose>

Comment [A4]: To be provided by
PHAC/HC

Related products

Backgrounders:

- 1 – Strengthening Laws to Protect Canadians from Barbaric Practices
- 2 – *Zero Tolerance for Barbaric Cultural Practices Act* – Polygamy and changes to the IRPA
- 3 – Why we need the *Zero Tolerance for Barbaric Cultural Practices Act* – research and cases
- 4 – Key federal initiatives protecting and supporting vulnerable women and girls from early and forced marriage and other harmful cultural practices
- 5 – What will the *Zero Tolerance for Barbaric Cultural Practices Act* do? The current approach versus proposed new approach (infographic)

Associated links

CIC:

Welcome to Canada: <http://www.cic.gc.ca/english/resources/publications/welcome/index.asp>

Discover Canada:

<http://www.cic.gc.ca/english/resources/publications/discover/index.asp>

Information for sponsored spouses or partners:

<http://www.cic.gc.ca/english/resources/publications/family-sponsorship.asp>

Suggestions from OGDs?

Department of Justice Canada:

Abuse is Wrong in any language

Comment [A5]: OGD's - do you have
links to add?

Photos of Minister Alexander available at:

<http://www.cic.gc.ca/english/department/media/photos/index.asp>

- 30 -

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Citizenship and
Immigration Canada

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Immigration Canada

BACKGROUND

Draft

BG 1 - An Overview of the Zero Tolerance for Barbaric Cultural Practices Act

In Canada, men and women are equal under the law. Canada's openness and generosity does not extend to early and forced marriage, polygamy or other types of barbaric cultural practices that tolerate any type of violence against women or girls, including spousal abuse, violence in the name of so-called "honour", or other, primarily gender-based violence. ~~Those found guilty~~ of these crimes are severely punished under Canada's criminal laws. ✓

To deliver on the Government of Canada's commitment to stand up for victims of violence and abuse and send a strong message to those in Canada and those wishing to come to Canada that barbaric cultural practices will not be tolerated on Canadian soil, the Government proposes to *amend four federal statutes:*

) doesn't flow to header.

Immigration and Refugee Protection Act

Address polygamy in Canada through the creation of a new polygamy-specific inadmissibility in the *Immigration and Refugee Protection Act*, which would:

- Prohibit temporary residents and permanent residents from practising polygamy in Canada; and
- Provide for the removal of non-citizens who practise polygamy in Canada without the need for a Criminal Code conviction.

Civil Marriage Act

italic

Make amendments to the *Civil Marriage Act* to:

Legislate across Canada two existing legal requirements for a valid marriage – the requirement for free and enlightened consent (proposed section 2.1), and the requirement for ending an existing marriage prior to entering another (proposed section 2.3). These legal requirements currently exist in federal legislation that applies in the Province of Quebec only (sections 5 and 7 of the *Federal Law–Civil Law Harmonization Act, No. 1*), and in the common law (court decisions) for residents of other provinces and territories.

The bill would also establish a new national minimum age for marriage of 16, below which no marriage could be contracted (proposed section 2.2). This legal requirement currently exists

only in federal legislation that applies in the Province of Quebec (section 6 of the *Federal Law-Civil Law Harmonization Act, No. 1*). The common law (court decisions) applying to residents of other provinces and territories is sometimes interpreted as setting a minimum age of 14 for boys and 12 for girls, and historically sometimes as low as age 7. This proposed amendment would provide equal protection to all Canadian children by setting the minimum age at age 16 across Canada.

Additional legal protections for children between the new minimum age for marriage and the age of majority, set by the province or territory of residence at 18 or 19 years of age, are found in provincial and territorial marriage laws. These laws currently require parental consent (and in some instances also the consent of a judge) to ensure that the child fully understands the legal consequences of marriage, in those exceptional circumstances where a child would be mature enough to marry. The Minister of Justice Canada has asked his provincial and territorial counterparts to consider making complementary amendments to their marriage laws to ensure that children are uniformly protected by requiring a judge to make the proper inquiries, in addition to parental consent, in the case of any marriage involving a child between the age of 16 and the age of majority.

there
✓ **Criminal Code**

Amend the *Criminal Code* to provide additional protections building on the proposed amendments to the *Civil Marriage Act* to prevent forced or underage marriages. The proposed amendments would:

- amend the existing offence for a legally-authorized officiant who knowingly solemnizes a marriage contrary to provincial law (section 295) to clarify that this also includes a marriage that is contrary to federal law, including a forced marriage or a marriage under the age of 16 – this offence is punishable by up to two years in prison;
- create a new offence prohibiting the active and knowing participation in a forced marriage ceremony by any person, including parents or other family members of the person being forced to marry, or the performance of a forced marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.1) - this offence would be punishable by a maximum of five years imprisonment; *no appropriate*
- create a new offence prohibiting the active and knowing participation in a marriage ceremony involving a person under the age of 16, by any person, including parents or other family members of the person who is underage, or the performance of an underage marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.2) - this offence would be punishable by a maximum of five years imprisonment;
- extend the existing offence of removing a child from Canada for the purpose of having certain offences committed abroad to include the removal of a child for the purpose of a forced marriage or a marriage under the age of 16 outside of Canada (proposed paragraph 273.3(1)(d)) – this offence is punishable by a maximum of five years' imprisonment; and
- introduce a new peace bond that gives the court power to impose conditions on a person where there are reasonable grounds to fear that a forced marriage or a marriage under the age of 16 will otherwise occur (proposed section 810.02).

The bill would also amend the *Criminal Code* to address concerns that the defence of provocation (section 232) has been raised in several so-called "honour" killing cases in Canada, in which accused persons who killed either their wives or their sister (along with their sister's fiancé) alleged that the killing was motivated by their perception that the victims had brought dishonour to them or their family through their conduct or choices, taking into account their culture's views about appropriate gender roles and behaviour.

The defence of provocation currently allows a person found to have committed murder (which carries a mandatory sentence of life in prison and minimum parole ineligibility periods) to seek a conviction of manslaughter instead (with no minimum sentence unless a firearm is used) by arguing that the victim's conduct provoked them to lose self-control and kill.

Currently, any conduct by the victim – including insults and other forms of offensive behaviour that are lawful – can potentially qualify as provocation if it is found to be sufficient to cause an ordinary person to lose self-control, the accused was not expecting it and the killing was sudden. The proposed amendment would limit the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family "honour" or reputation, cannot be used to reduce murder to manslaughter; only conduct by the victim that amounts to a relatively serious criminal offence (i.e. an offence under the *Criminal Code* punishable by at least 5 years in prison) could be argued to be "provocation" for the purposes of the defence.

Consequential amendments

Consequential amendments resulting from the above-mentioned changes will also be made to the *Federal Law-Civil Law Harmonization Act, No. 1*, the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act*, primarily to include references to the new peace bond.



BACKGROUND

Draft

BG 2 - Zero Tolerance for Barbaric Cultural Practices Act – Polygamy and changes to the *Immigration and Refugee Protection Act*

A polygamous marriage is defined as one in which an individual has more than one spouse at the same time. It is an offence, under section 293 of the *Criminal Code*, to practise polygamy or enter into a polygamous union in Canada. The constitutionality of the provision was upheld by the Supreme Court of British Columbia in 2011.

There is an increasing global consensus that polygamy is fundamentally harmful to women, children and the men who practice it, and to the wider society, because it creates great potential for the exploitation and abuse of female spouses and underage girls. Human rights and women's rights organizations have consistently called for the abolition of polygamy. In spite of this, some countries allow such practices and others, like Canada, face challenges in eliminating it. ✓

The *Zero Tolerance for Barbaric Cultural Practices Act* proposes the creation of a new inadmissibility for polygamy in the *Immigration and Refugee Protection Act* (IRPA).

This provision would increase the Government of Canada's ability to prevent polygamy from occurring in Canada. While current IRPA provisions require foreign nationals wishing to become permanent residents to have only one spouse, once in Canada it is difficult to find these individuals inadmissible. A criminal conviction or finding of misrepresentation is currently required before a person practicing polygamy can be found inadmissible.

The changes would mean that a polygamist permanent resident or foreign national who is or will be physically present in Canada with even one of their polygamous spouses would be considered to be practising polygamy in Canada. The permanent resident or foreign national could be found inadmissible *on that basis alone*, without requiring evidence that the person misrepresented their situation or has a criminal conviction.

The new inadmissibility would apply in both the temporary and permanent immigration streams. While in the permanent stream, permanent residents will be required to convert their first polygamous marriage to a monogamous marriage prior to being permitted to immigrate with one spouse. In the temporary stream, visitors, students and workers who practise polygamy abroad would be admissible to Canada only as long as they travel without any of their spouses. Those who were to come with even one spouse, or join a polygamous spouse in Canada, would be considered to be practising polygamy on Canadian soil and would be inadmissible under IRPA.



Citizenship and
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BACKGROUND

Draft

BG 5 - A comparative before and after view of changes to the *Immigration and Refugee Protection Act (IRPA)*, the *Civil Marriage Act*, the *Criminal Code* and Consequential Amendments being proposed in the *Zero Tolerance for Barbaric Cultural Practices Act*

BEFORE	AFTER
<p>Polygamy – Current Admissibility Provisions under IRPA</p> <p>Permanent Resident In the permanent residency stream, a foreign national, when entering Canada and becoming a permanent resident, is permitted to have only one spouse. This requires an individual who is practicing polygamy to convert their first marriage into a monogamous relationship.</p> <p>That said, as polygamous marriages are legal in certain countries, some permanent resident applicants who tried to enter Canada having converted their first marriage to monogamy may try to circumvent the system by having additional spouses submit their applications separately, at a later date, so that they can resume the practice of polygamy in Canada.</p> <p>In Canada, the permanent resident could only be found inadmissible for practising polygamy if they are convicted in Canada of the criminal offence described under s. 293 of the <i>Criminal Code</i> and receive a term of imprisonment of more than six months. A permanent resident may also be found inadmissible for misrepresentation under immigration law, if they lied about</p>	<p>Polygamy – proposed amendments to admissibility provisions under IRPA</p> <p>In the permanent residency stream, a foreign national who practices polygamy would still be required to convert their first polygamous marriage to a monogamous one before being eligible to become a permanent resident.</p> <p>However, once in Canada, a permanent resident who begins or resumes practising polygamy would be found inadmissible under the new provision. Also, as IRPA would have a specific provision for polygamy, removal proceedings could be initiated without either a criminal conviction or a finding of misrepresentation.</p>

<p>being in a polygamous relationship when they became a permanent resident.</p>	
<p>Temporary Resident A temporary resident who practices polygamy in their country of origin is generally allowed to enter with only one spouse at the time of seeking entry.</p>	<p>A foreign national seeking temporary residence who practices polygamy in their country of origin would be allowed to enter Canada only if they are travelling without any of their spouses. The physical presence in Canada of two individuals from a polygamous relationship will be considered as "practising polygamy in Canada".</p>
<p>Civil Marriage Act Legal Requirements to Marry The legal requirement for free and enlightened consent to marriage is currently contained in federal legislation that applies in the Province of Quebec only, and in the common law (court decisions) for residents of other provinces and territories.</p> <p>The minimum age of 16 for marriage, below which no marriage can be contracted, is currently contained in federal legislation that applies in the Province of Quebec only. For the other provinces and territories, the minimum age is not currently provided for in federal legislation and there is some debate about the minimum age in the common law between age twelve for girls and fourteen for boys.</p> <p>The legal clarification that any previous marriage must be dissolved prior to a new marriage is currently contained in federal legislation that applies in the Province of Quebec only. (The requirement for monogamy already exists nationally in section 4 of the <i>Civil Marriage Act</i> and is reflected in sections 290, 291 & 293 of the <i>Criminal Code</i>.)</p>	<p>The legal requirement for free and enlightened consent to marriage would now apply nationally to all Canadian residents.</p> <p>A new national minimum age of 16 for marriage, below which no marriage can be contracted, would now apply to all Canadian residents. Legislation in the provinces and territories may set out additional requirements, such as parental consent and consent of the court, for marriages between the national minimum age and the age of majority.</p> <p>The legal clarification that any previous marriage must be dissolved prior to a new marriage would now apply nationally to all Canadian residents.</p>
<p>Criminal Code</p>	
<p>Early and Forced Marriage Family members can employ a range of techniques to force a marriage onto an unwilling person, both in the time leading</p>	<p>Family members and others would be subject to prosecution where they actively and knowingly participate in a forced or early marriage ceremony, such as by</p>

up to the marriage and possibly also in connection with the marriage ceremony itself. Family members may also engage in similar conduct to cause an underage child to marry. Wherever the conduct involved amounts to an existing criminal offence – such as uttering threats, assault, or forcible confinement – it is subject to prosecution.

Removal of Child from Canada

In a situation of a forced or early marriage, family members could be prosecuted for taking steps to remove a young person from Canada if the Crown could prove that they did so with the knowledge that, following a forced or early marriage ceremony abroad, the child would be subjected to a sexual offence.

Peace Bond

Where there are reasonable grounds to fear that a person – including family members – will cause personal injury to another person, they can be brought to court and ordered to enter into a recognizance to keep the peace and be of good behaviour. Other conditions can be imposed, including that the person have no contact with the person who fears for their safety. A person subject to a peace bond could be prosecuted if they breach the order.

Provocation Defence

A person who is found to have committed murder can raise the defence of provocation where they killed the victim in the “heat of passion” brought on by a “wrongful act or insult” from the victim that would be sufficient to cause an ordinary person to lose self-control. Individuals who are prosecuted for murder in so-called “honour” killings can raise the defence, if they allege that the victim’s conduct was so

transporting an unwilling or underage daughter to the ceremony or acting as a legal witness. A person who knowingly performs a forced or early marriage ceremony would also be subject to prosecution.

Family members and others would be subject to prosecution where they take steps to **remove a young person from Canada specifically with the intent that they be subjected to a forced or early marriage abroad**. The Crown would not have to prove that the family knew there would be a sexual offence following the marriage.

Where there are reasonable grounds to believe that a person will specifically aid or participate in a forced or early marriage ceremony involving someone else (for example, their child), or will take a young person out of Canada for the purposes of a forced or early marriage ceremony abroad, they could be brought to court and ordered to enter into a **recognizance** to keep the peace and be of good behaviour. A court would be empowered to make orders that could be particularly useful in specifically preventing an early or forced marriage, whether in Canada or abroad, such as ordering the person to surrender travel documents, to refrain from making arrangements or agreements in relation to the marriage, or to participate in a family violence counselling program.

The **provocation** defence would only be available to an accused found guilty of murder where the conduct of the victim that provoked the accused to kill amounted to a criminal offence punishable by 5 years or more in prison could qualify.

<p>insulting and offensive to them and/or to their family's reputation that it caused them to kill in a state of rage.</p> <p>Where successful, provocation is a defence for murder that results in a conviction for manslaughter. Manslaughter carries a maximum punishment of life in prison, and no minimum punishment except if a firearm was used (4 years).</p>	<p>A victim's personal choices about lifestyle or dating or marriage partners, including where such choices were conveyed in a manner perceived as insulting, could not qualify as provocation for the purposes of providing a defence to murder.</p>
<p>Consequential Amendments</p>	
<p>Federal Law-Civil Law Harmonization Act, No. 1 Three legal requirements for marriage currently apply only in the Province of Quebec.</p> <p>Prisons and Reformatories Act Section 2 of the <i>Prisons and Reformatories Act</i> provides a definition of "prisoner", which in turn permits such persons to be lawfully held in a provincial jail.</p> <p>Youth Criminal Justice Act Subsection 14(2) of the <i>Youth Criminal Justice Act</i> gives jurisdiction to a youth justice court to make orders against young persons under the peace bond provisions of the Code.</p> <p>Subsection 142(1) of the <i>Youth Criminal Justice Act</i> provides that the provisions of Part XXVII of the <i>Criminal Code</i> apply to proceedings in respect of peace bonds against young persons.</p>	<p>These provisions, which are now being enacted nationally, will be repealed from the statute where they apply only in the Province of Quebec.</p> <p>A person who breaches conditions imposed as part of a peace bond, including the new peace bond where there is a fear that they may commit a forced or early marriage offence, could be lawfully held in a provincial jail.</p> <p>A youth justice court would also have jurisdiction to impose a new peace bond where there is a fear that a young person may commit a forced or early marriage offence.</p> <p>The new peace bond to prevent forced or early marriage, when ordered against a young person, would be governed by the provisions of Part XXVII of the <i>Criminal Code</i>, as is the case for other peace bonds.</p>

In 2009, Hasibullah Sadiqi was convicted of the 2006 first degree murder of his sister, Khatera, and her fiancé Feroz Mangal, who had become engaged without the prior approval of her father. Mr. Sadiqi raised the defence of provocation, alleging that he killed his sister and her fiancé in the "heat of passion" in response to things said by Mr. Mangal that Mr. Sadiqi found offensive toward his father and their family. The defence was rejected.

On April 17, 2009, a 19 year old Montréal woman, Zainab Shafia, fled her family home because her parents were trying to force her to marry a man she did not want to marry. Three months later, her body and the bodies of her two sisters and their father's first wife from a polygamous marriage, were found in a Kingston canal lock.

On January 2, 2010, a young Calgary woman was beaten by her uncle and three cousins for refusing to marry the man her uncle had chosen for her.



Citizenship and Immigration Minister Chris Alexander held three roundtables across Canada in January 2014 on violence against women in the immigration context.

A 2014 CIC questionnaire sent by Citizenship and Immigration Canada to Canadian missions abroad showed that:

- Victims of suspected cases of forced marriage are usually female members of the Family Class or Refugees;
- Certain missions have seen cases of early marriage, primarily in the Family Class. Young spouses are generally females from rural or remote areas with lower levels of education and coming from low socio-economic backgrounds.

The Department of Foreign Affairs, Trade and Development has reported approximately 100 requests for consular assistance in forced marriage cases since 2009.





BACKGROUND

Draft

BG 3 – Why we need the *Zero Tolerance for Barbaric Cultural Practices Act*

–Research and Cases–

To deliver on the commitment in the 2013 Speech from the Throne, the Government introduced a comprehensive package of legislative amendments on October xx, 2014, to ensure that early and forced marriage and other harmful cultural practices, including polygamy and so-called honour-based violence, do not occur on Canadian soil and that vulnerable Canadians and those coming to Canada are protected from these practices.

Newcomer and immigrant women can face additional barriers in protecting themselves and seeking assistance when compared to women born in Canada. These challenges may include: isolation, lack of language proficiency; lack of awareness of rights; fear of immigration consequences; lack of economic independence and concern about retaliation for seeking help or alerting the authorities.

Early and forced marriage, polygamy and so-called “honour” based violence can have severe and even fatal consequences. These cultural practices, which go against Canadian values and many of which are in violation of Canada’s international human rights commitments, will not be tolerated in Canada.

Research and these cases, among others, provide clear examples of the need to ensure that the immigration system does not facilitate the occurrence of such barbaric practices on Canadian soil:

There are more than 1,000 residents in the polygamous community of Bountiful, B.C., some of whom may be foreign nationals and are alleged to have entered Canada as visitors from the United States to “marry” Canadian residents. Winston Blackmore, the former leader of the Fundamentalist Church of Jesus Christ of the Latter-Day Saints in Bountiful has publicly declared Canada a “safe haven for polygamists”.

In August 2013, a study by the South Asian Legal Clinic of Ontario found that 219 forced marriage cases were dealt with by Ontario service providers from 2010 to 2012.



In 2000, a young British Columbia woman, Jaswinder Sidhu, was murdered because she chose to secretly marry the man she loved, a poor rickshaw driver, and not the person chosen for her by her family.



BACKGROUND

Draft

BG 5 - A comparative before and after view of changes to the *Immigration and Refugee Protection Act (IRPA)*, the *Civil Marriage Act*, the *Criminal Code* and Consequential Amendments being proposed in the *Zero Tolerance for Barbaric Cultural Practices Act*

BEFORE	AFTER
Polygamy – Current Admissibility Provisions under IRPA	Polygamy – proposed amendments to admissibility provisions under IRPA
<p>Permanent Resident</p> <p>In the permanent residency stream, a foreign national, when entering Canada and becoming a permanent resident, is permitted to have only one spouse. This requires an individual who is practicing polygamy to convert their first marriage into a monogamous relationship.</p> <p>That said, as polygamous marriages are legal in certain countries, some permanent resident applicants who tried to enter Canada having converted their first marriage to monogamy may try to circumvent the system by having additional spouses submit their applications separately, at a later date, so that they can resume the practice of polygamy in Canada.</p> <p>In Canada, the permanent resident could only be found inadmissible for practising polygamy if they are convicted in Canada of the criminal offence described under s. 293 of the <i>Criminal Code</i> and receive a term of imprisonment of more than six months. A permanent resident may also be found inadmissible for misrepresentation under immigration law, if they lied about</p>	<p>In the permanent residency stream, a foreign national who practices polygamy would still be required to convert their first polygamous marriage to a monogamous one before being eligible to become a permanent resident.</p> <p>However, once in Canada, a permanent resident who begins or resumes practising polygamy would be found inadmissible under the new provision. Also, as IRPA would have a specific provision for polygamy, removal proceedings could be initiated without either a criminal conviction or a finding of misrepresentation.</p>

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Temporary Resident A temporary resident who practices polygamy in their country of origin is generally allowed to enter with only one spouse at the time of seeking entry.	A foreign national seeking temporary residence who practices polygamy in their country of origin would be allowed to enter Canada only if they are travelling without any of their spouses. The physical presence in Canada of two individuals from a polygamous relationship will be considered as "practising polygamy in Canada".
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BACKGROUND

Draft

BG 5 - A comparative before and after view of changes to the *Immigration and Refugee Protection Act (IRPA)*, the *Civil Marriage Act*, the *Criminal Code* and Consequential Amendments being proposed in the *Zero Tolerance for Barbaric Cultural Practices Act*

BEFORE	AFTER
Polygamy – Current Admissibility Provisions under IRPA Permanent Resident In the permanent residency stream, a foreign national, when entering Canada and becoming a permanent resident, is permitted to have only one spouse. This requires an individual who is practising polygamy to convert their first marriage into a monogamous relationship. That said, as polygamous marriages are legal in certain countries, some permanent resident applicants who tried to enter Canada having converted their first marriage to monogamy may try to circumvent the system by having additional spouses submit their applications separately, at a later date, so that they can resume the practice of polygamy in Canada. In Canada, the permanent resident could only be found inadmissible for practising polygamy if they are convicted in Canada of the criminal offence described under s. 293 of the <i>Criminal Code</i> and receive a term of imprisonment of more than six months. A permanent resident may also be found inadmissible for misrepresentation under immigration law, if they lied about	Polygamy – proposed amendments to admissibility provisions under IRPA In the permanent residency stream, a foreign national who practices polygamy would still be required to convert their first polygamous marriage to a monogamous one before being eligible to become a permanent resident. However, once in Canada, a permanent resident who begins or resumes practising polygamy would be found inadmissible under the new provision. Also, as IRPA would have a specific provision for polygamy, removal proceedings could be initiated without either a criminal conviction or a finding of misrepresentation.

being in a polygamous relationship when they became a permanent resident.	
Temporary Resident A temporary resident who practises polygamy in their country of origin is generally allowed to enter with only one spouse at the time of seeking entry.	A foreign national seeking temporary residence who practices polygamy in their country of origin would be allowed to enter Canada only if they are travelling without any of their spouses. The physical presence in Canada of two individuals from a polygamous relationship will be considered as "practising polygamy in Canada".
Civil Marriage Act	
Legal Requirements to Marry The legal requirement for free and enlightened consent to marriage is currently contained in federal legislation that applies in the Province of Quebec only, and in the common law (court decisions) for residents of other provinces and territories. The minimum age of 16 for marriage, below which no marriage can be contracted, is currently contained in federal legislation that applies in the Province of Quebec only. For the other provinces and territories, the minimum age is not currently provided for in federal legislation and there is some debate about the minimum age in the common law between age twelve for girls and fourteen for boys, and age seven. The legal clarification that any previous marriage must be dissolved prior to a new marriage is currently contained in federal legislation that applies in the Province of Quebec only. (The requirement for monogamy already exists nationally in section 4 of the <i>Civil Marriage Act</i> and is reflected in sections 290, 291 & 293 of the <i>Criminal Code</i> .)	The legal requirement for free and enlightened consent to marriage would now apply nationally to all Canadian residents. A new national minimum age of 16 for marriage, below which no marriage can be contracted, would now apply to all Canadian residents. Legislation in the provinces and territories may set out additional requirements, such as parental consent and consent of the court, for marriages between the national minimum age and the age of majority. The legal clarification that any previous marriage must be dissolved prior to a new marriage would now apply nationally to all Canadian residents.
Criminal Code	
Early and Forced Marriage Family members can employ a range of techniques to force a marriage onto an unwilling person, both in the time leading	Family members and others would be subject to prosecution where they actively and knowingly participate in a forced or early marriage ceremony , such as by

up to the marriage and possibly also in connection with the marriage ceremony itself. Family members may also engage in similar conduct to cause an underage child to marry. Wherever the conduct involved amounts to an existing criminal offence – such as uttering threats, assault, or forcible confinement – it is subject to prosecution.

Removal of Child from Canada

In a situation of a forced or early marriage, family members could be prosecuted for taking steps to remove a young person from Canada if the Crown could prove that they did so with the knowledge that, following a forced or early marriage ceremony abroad, the child would be subjected to a sexual offence.

Peace Bond

Where there are reasonable grounds to fear that a person – including family members – will cause personal injury to another person, they can be brought to court and ordered to enter into a recognizance to keep the peace and be of good behaviour. Other conditions can be imposed, including that the person have no contact with the person who fears for their safety. A person subject to a peace bond could be prosecuted if they breach the order.

Provocation Defence

A person who is found to have committed murder can raise the defence of provocation where they killed the victim in the "heat of passion" brought on by a "wrongful act or insult" from the victim that would be sufficient to cause an ordinary person to lose self-control. Individuals who are prosecuted for murder in so-called "honour" killings can raise the defence, if they allege that the victim's conduct was so

transporting an unwilling or underage daughter to the ceremony or acting as a legal witness. A person who knowingly performs a forced or early marriage ceremony would also be subject to prosecution.

Family members and others would be subject to prosecution where they take steps to **remove a young person from Canada specifically with the intent that they be subjected to a forced or early marriage abroad**. The Crown would not have to prove that the family knew there would be a sexual offence following the marriage.

Where there are reasonable grounds to believe that a person will specifically aid or participate in a forced or early marriage ceremony involving someone else (for example, their child), or will take a young person out of Canada for the purposes of a forced or early marriage ceremony abroad, they could be brought to court and ordered to enter into a **recognizance** to keep the peace and be of good behaviour. A court would be empowered to make orders that could be particularly useful in specifically preventing an early or forced marriage, whether in Canada or abroad, such as ordering the person to surrender travel documents, to refrain from making arrangements or agreements in relation to the marriage, or to participate in a family violence counselling program.

The **provocation** defence would only be available to an accused found guilty of murder where the conduct of the victim that provoked the accused to kill amounted to a criminal offence punishable by 5 years or more in prison could qualify.

<p>insulting and offensive to them and/or to their family's reputation that it caused them to kill in a state of rage.</p> <p>Where successful, provocation is a defence for murder that results in a conviction for manslaughter. Manslaughter carries a maximum punishment of life in prison, and no minimum punishment except if a firearm was used (4 years).</p>	<p>A victim's personal choices about lifestyle or dating or marriage partners, including where such choices were conveyed in a manner perceived as insulting, could not qualify as provocation for the purposes of providing a defence to murder.</p>
<p>Consequential Amendments</p>	
<p>Federal Law—Civil Law Harmonization Act, No. 1 Three legal requirements for marriage currently apply only in the Province of Quebec.</p> <p>Prisons and Reformatories Act Section 2 of the <i>Prisons and Reformatories Act</i> provides a definition of "prisoner", which in turn permits such persons to be lawfully held in a provincial jail.</p> <p>Youth Criminal Justice Act Subsection 14(2) of the <i>Youth Criminal Justice Act</i> gives jurisdiction to a youth justice court to make orders against young persons under the peace bond provisions of the Code.</p> <p>Subsection 142(1) of the <i>Youth Criminal Justice Act</i> provides that the provisions of Part XXVII of the <i>Criminal Code</i> apply to proceedings in respect of peace bonds against young persons.</p>	<p>These provisions, which are now being enacted nationally, will be repealed from the statute where they apply only in the Province of Quebec.</p> <p>A person who breaches conditions imposed as part of a peace bond, including the new peace bond where there is a fear that they may commit a forced or early marriage offence, could be lawfully held in a provincial jail.</p> <p>A youth justice court would also have jurisdiction to impose a new peace bond where there is a fear that a young person may commit a forced or early marriage offence.</p> <p>The new peace bond to prevent forced or early marriage, when ordered against a young person, would be governed by the provisions of Part XXVII of the <i>Criminal Code</i>, as is the case for other peace bonds.</p>

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Media Lines

Zero Tolerance for Barbaric Cultural Practices

Key Messages

- The Government is proposing several legislative changes to deliver on the commitment in the 2013 Speech from the Throne to address early and forced marriage, as well as other harmful cultural practices.
- The Government of Canada firmly believes that free and healthy societies require the full participation of women. Cultural practices which seek to limit the participation of women and girls go against Canadian values and will not be tolerated.

Civil Marriage Act amendments

- The *Civil Marriage Act* would be amended to legislate across Canada two existing legal requirements for marriage:
 - the requirement for free and enlightened consent; and
 - the requirement to end an existing marriage prior to entering into another.
- In addition, the *Act* would be amended to establish a new national minimum age for marriage of 16 to protect all Canadian children equally.

Criminal Code amendments

- Several *Criminal Code* changes are also proposed as part of this commitment, building on the proposed changes to the *Civil Marriage Act*.
- These changes include:
 - creating new offences to:
 - prohibit the active and knowing participation in a forced marriage ceremony by any person, including parents or other family members of the person being forced to marry, or the performance of a forced marriage ceremony, whether or not the person is legally authorized to do so; and
 - prohibit the active and knowing participation in a marriage ceremony involving a person under the age of 16, by any person, including parents or other family members of the person who is underage, or the performance of an underage marriage ceremony whether or not the person is legally authorized to do so;
 - amending the existing offence prohibiting a legally authorized officiant to knowingly solemnize a marriage contrary to provincial law to clarify that this also includes a marriage that is contrary to federal law, including a forced marriage or a marriage under the age of 16;
 - extending the existing offence of removing a child from Canada for the purpose of having certain offences committed abroad to include the removal of a child for the purpose of a forced marriage or a marriage under the age of 16;
 - introducing a new peace bond that gives the court power to impose conditions on a person where there are reasonable grounds to fear that a forced marriage or a marriage under the age of 16 will otherwise occur; and
 - amending the *Criminal Code* to address concerns about the defence of provocation, which has been raised in several so-called honour killing cases in

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Canada, so that only conduct by the victim that amounts to a relatively serious criminal offence can be provocation for the purposes of the defence.

Immigration and Refugee Protection Act

(CIC to provide)

Consequential amendments

- The bill also proposes consequential amendments to the *Federal Law–Civil Law Harmonization Act, No. 1*, the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act*.

If pressed on “honour-based” violence and “honour killings”

- The expressions “honour-based” violence and “honour killing” are not used in the *Criminal Code*.
- These terms speak to the motive that a person has for using violence toward another person. From a criminal law perspective, all violence is criminal, regardless of the motive for which it is committed. Motive may play a role in the court’s determination of what is a fit sentence, but it is not generally a part of the definition of crimes.
- The law is clear that an intentional killing is murder, regardless of the motive. The provocation defence can result in a conviction for manslaughter for what would otherwise be a murder, and this is why it is being amended in this Bill.
- Honour violence that does not cause death is addressed through the existing offences in the *Criminal Code* such as assault, criminal harassment, murder, and related aggravating sentencing factors.
- In sentencing any case of murder, these aggravating factors in s. 718.2(a) of the *Criminal Code* may potentially apply, depending on the facts:
 - evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner;
 - evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor;
 - evidence that the offender, in committing the offence, abused a person under the age of eighteen years; and
 - evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim.

If pressed on forced marriage

- Forced marriage is generally defined as a marriage in which one or both people do not give their free and enlightened consent and criminal conduct may be involved.
- A variety of means might be employed to force or constrain a person to marry against their will, often beginning with non-criminal means, such as threats of being cut off from

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family, but sometimes escalating where compliance is not obtained to criminal offences, such as uttering threats of physical violence, threatening or harming other loved ones or pets, forcible confinement and/or assault.

- It is important to distinguish arranged marriages from forced marriages. In forced marriages, one or both of the individuals do not give their free and enlightened consent to the marriage.

If pressed on Bountiful

- The practice of polygamy has no place in Canadian society.
- In 2011, the Supreme Court of British Columbia upheld the constitutionality of the *Criminal Code* prohibition on polygamy (s.293) and found it consistent with the *Canadian Charter of Rights and Freedoms*.

If pressed on the lack of prosecutions under s.293

- Under Canada's Constitution, while Parliament is responsible for enacting criminal law, the administration of justice, including conducting prosecutions under the *Criminal Code*, is within the jurisdiction of the provincial governments.

s.21(1)(a)

Message Event Proposal

Date: October TBD	Media Market: National mainstream, regional media, multicultural media
Location: Technical Briefing News Conference Timing of introduction will be dependent on day of the week	English Media Spokesperson: Minister Alexander
	French Media Spokesperson: Minister Alexander
	Multicultural Media Spokesperson: Minister Alexander
	Media Plan & Social Media Plan Developed? TBC
	Priority Theme Week Message? Yes/No
	MRO contacted? N/A

EVENT: Zero Tolerance for Barbaric Cultural Practices Act

- Minister Alexander will hold a news conference at XXX in Ajax-Pickering (TBC) following the introduction of Bill XXX – the Zero Tolerance for Barbaric Cultural Practices Act in the House of Commons.
 - A dial in option will be provided for out-of-town media and members of the National Press Gallery and a limited number of questions will be taken from the phone.
 - A technical briefing for media will also take place at XXX before the legislation's introduction.
- Minister Alexander will be available to multicultural media via teleconference following the news conference.

8:30 a.m. (TBD) – Lock up begins with viewing of documents

9:00 - 10:00 a.m. (TBD)– Media Technical briefing by Departmental officials

- Media will be invited to a joint DOJ/CIC presentation by technical experts followed by a Q and A session.
- Media will be permitted to bring equipment or recording devices for note-taking purposes only (not for broadcast).
- Out-of-town media will be invited to call in (listen in mode), if waiver signed.
- Communications products to support the legislation's introduction will be provided in media kits.

9:00 - 10:00 a.m. (TBD) – MP Technical briefing by departmental officials (location in Ottawa TBD)

- Same technical briefing will be provided to MPs and staff.
- Communications products to support the legislation's introduction will be provided in MP kits.

10:02 a.m. (if Tuesday or Thursday) – Introduction of Legislation in the House of Commons

10:15 - 11:15 a.m.(TBD) – News conference with Minister Alexander (location Ajax-Pickering TBC)

- Members of the National Press Gallery and out-of-town media will be invited to call in; a limited number of questions will also be taken from the phone.

s.21(1)(a)

11:30 a.m. - 12:30 p.m. (TBD) – Minister Alexander teleconference call with Multicultural media

Timing TBD (as soon as possible after tabling) - Joint DOJ/CIC officials national teleconference call with stakeholder groups

STRATEGIC OBJECTIVES

- To demonstrate government action on its Speech from the Throne commitment to ensure that cultural barbaric practices are not tolerated on Canadian soil
- To demonstrate that the government, as a whole, is taking a strong stance against barbaric practices such as "honour killings", female genital mutilation, forced marriage and other gender-based violence.

GOVERNMENT/PARTNER FUNDING (IF APPLICABLE):

- DOJ - educating police, prosecutors, and front-line workers.
- DFATD - \$5 million to stop early and forced marriage; also working with CIC to help officers to recognize and deal with these issues.
- CIC's settlement program provides funding to support programs for immigrant women.
- Public Health Agency of Canada educating health professionals and front-line workers.
- Status of Women - \$2.8 million since 2007 to stop honour-based violence

OTHER PARTICIPANTS (IF APPLICABLE)

- Minister MacKay
- Minister Leitch
- Minister Ambrose
- Minister Baird
- GTA caucus
- Joint DOJ/CIC lead with support from DFATD, PHAC, SWC, PS/CBSA, Multiculturalism

STAKEHOLDER ENGAGEMENT

Stakeholders (list TBD) will be invited to join conference call with DOJ and CIC officials (time TBC):

The following groups were among those invited to the Minister's roundtable on Stopping Violence Against Women (January 2014). GTA organizations could be invited to the news conference (TBD)

GTA

Women's Economic Council
YWCA Canada
ICCC's Women Entrepreneurs and Professionals
Durham Region Unemployment Help Centre
WMRCC - Women's Multi-cultural Resource and Counselling Centre of Durham
Canadian Council of Muslim Women
Social Services Network
Herizon House
Muslim Welfare Centre
Agincourt Community Services
Mouvement ontarien des femmes immigrantes francophones
Toronto Region VAW Shelter Network
Ontario Council of Agencies Serving Immigrants

Surrey BC

Multicultural and Immigrant Integration Services, Abbotsford Community Services
Progressive Intercultural Community Services Society (PICS)
G.V. Counselling & Education Society for Families
Black and Blue Sari (website)
S.U.C.C.E.S.S (Vancouver Region and Richmond Region)
Multicultural Advisory Council of B.C.
Touchstone Family Association
Multicultural Helping House
DIVERSEcity Community Resources Society
Immigrant Services Society of BC
MOSAIC
Simon Fraser University - department of Gender, Sexuality and Women's Studies
Langley Community Services Society
Options Community Services Society

Montreal

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Girl's Action Foundation
YWCA Canada
Shield of Athena
Espace Femmes Arabes
Centre communautaire des femmes sud-asiatiques
La Maison Afghan-Canadienne (MAFCAN)
AIDE Sherbrooke
Centre de prévention des agressions de Montréal (CPAM) / Montreal Assault Prevention Centre
Quebec coalition against human trafficking CATHII
La Concertation des luttes contre l'exploitation sexuelle (CLES)
La Table de concertation des organismes au service des personnes réfugiées et immigrantes (TCRI)

Additional names – to come

ACTUAL SPEAKING BACKDROP

- TBD

WRITTEN MESSAGE(S)

NEWS RELEASE HEADLINE: Protecting Canada from Barbaric Cultural Practices

Backgrounders (5):

1. The *Zero Tolerance for Barbaric Practices Act* – Strengthening laws to protect Canada from barbaric cultural practices – This "overview" backgrounder would cover proposed *Criminal Code*, *Civil Marriage Act* and *Immigration Refugee Protection Act* changes to be prepared by DOJ and CIC. *Cultural*
2. *Zero Tolerance for Barbaric Practices Act* – Polygamy and Changes to IRPA – CIC lead *Cultural*
3. Why we need the *Zero Tolerance for Barbaric Practices Act*: Research and Cases *Cultural*
4. Other key federal initiatives protecting and supporting vulnerable women and girls from early, forced marriage and other harmful cultural practices.
5. Infographic Backgrounder: What will the *Zero Tolerance for Barbaric Practices Act* will do – Comparison Chart – current approach to new approach *Cultural*

MINISTERIAL QUOTES:

- "With the *Zero Tolerance for Barbaric Practices Act*, we are strengthening our laws to protect Canada from barbaric cultural practices. We are sending a strong message to those in Canada and those to wish to come to Canada that we will not tolerate cruel and inhumane cultural traditions. Our government will continue to stand up for all victims of violence and abuse and take necessary action to prevent these practices from happening on Canadian soil."
Chris Alexander, Canada's Citizenship and Immigration Minister *Cultural*
- Quote from Minister Leitch
- Quote from Minister Ambrose
- Quote from Minister MacKay

s.21(1)(a)

MESSAGES:

- The Government is strengthening our laws to prevent barbaric cultural practices from happening on Canadian soil. *Cultural*
- The proposed changes under the *Zero Tolerance for Barbaric Practices Act* would provide more protection and support for victims of barbaric practices by:
 - making it easier to take legal action against perpetrators of forced marriages;
 - helping protect potential victims of early or forced marriages by issuing court-ordered peace bonds, such as passport surrenders or preventing a child from being taken out of the country;
 - limiting the defence of provocation in so-called "honour" killings and spousal homicides

Cultural
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- making it easier for immigration and border services officers at ports of entries to stop foreign nationals or permanent residents from practising polygamy in Canada;
- Rendering permanent residents and temporary residents inadmissible to Canada on the basis that they are polygamists.
- The *Zero Tolerance for Barbaric Practices Act* sends a clear message to those coming to this country that barbaric cultural practices are unacceptable and will not be tolerated. Those found guilty of these crimes will be punished under Canada's criminal laws.
- These changes would also build upon existing federal initiatives that are providing vital support, protection and services for immigrant women.

MEDIA PLAN (TBC):

- Pre-positioning with selected journalists/outlets will take place the day before the announcement.
- Members of the National Press Gallery and out-of-town media will be invited to call in (listen in mode) to the news conference.
- The following outlets will be contacted for interviews with Minister Alexander:

Television:

Radio:

MULTICULTURAL MEDIA PLAN:

- A teleconference call with multicultural media will take place the day of the tabling of the legislation, following the news conference.
- One-on-one interviews with:

Television:

Radio:

ROLLOUT

COMMUNICATIONS PRODUCTS (check all that apply):

<input checked="" type="checkbox"/> Media Advisory	<input checked="" type="checkbox"/> Speech	<input checked="" type="checkbox"/> New Release	<input checked="" type="checkbox"/> Backgrounder(s) X8
<input checked="" type="checkbox"/> Q&A	<input type="checkbox"/> Talking Points	<input type="checkbox"/> M.P. / Caucus Kit	<input type="checkbox"/> Biographies
<input checked="" type="checkbox"/> Post-Event Media (Twitter, Facebook)	<input checked="" type="checkbox"/> Web Content	<input checked="" type="checkbox"/> Photo Release	<input type="checkbox"/> Props (describe)

APPROVALS

MEP APPROVED BY (In the Ministers Office):

- ☐ Communications: Codie Taylor
- ☐ Policy: Sabine El-Chidiac -----> ☐ followed up with PMO policy (check yes or no)
- ☐ Issues: Codie Taylor
- ☐ Stakeholders: -----> ☐ followed up with PMO Stakeholders (check yes or no)

Updated: September 25, 2014

Bill XX – the *Zero Tolerance for Barbaric Cultural Practices Act* - Background

s.21(1)(a)

To deliver on the commitment in the 2013 Speech from the Throne, the Government introduced a comprehensive package of legislative amendments on October xxx, 2014, to ensure that early and forced marriage and other harmful cultural practices, including polygamy, female genital mutilation and so-called honour-based violence, do not occur on Canadian soil.

Free and healthy societies require the full participation of women. Sadly, in many countries around the world, millions of women and girls continue to be prevented from full participation through violence, including through the inhumane practice of early and forced marriage. It is the reality of our country that Canadians of very different origins live and work together side by side. New Canadians work hard to learn our languages, our values, and our traditions, and in turn, are welcomed as equal members of the Canadian family. These cultural practices, which go against Canadian values, and many of which are in violation of Canada's international human rights commitments, will no longer be tolerated in Canada.

These cultural practices do not only happen in one religion or one culture, but have taken place in families with a wide range of religious and cultural backgrounds.

For example:

- In 2000, a young British Columbia woman, Jaswinder Sidhu, was murdered because she chose to secretly marry the man she loved, a poor rickshaw driver, and not the person chosen for her by her family.
In 2006, Hasibullah Sadiqi was charged with the first degree murder of his sister, Khatera, and her fiancé Feroz Mangal, who had become engaged without the prior approval of her father.
On April 17, 2009, a 19 year old Montréal woman, Zainab Shafia, fled her family home because her parents were trying to force her to marry a man she did not want to marry. Three months later, her body and the bodies of her two sisters and their father's first wife in a polygamous marriage, were found in a Kingston canal lock.
- On January 2, 2010, a young Calgary woman was beaten by her uncle and three cousins for refusing to marry the man her uncle had chosen for her.
- In August 2013, a study by the South Asian Legal Clinic of Ontario found that 219 forced marriage cases were dealt with by Ontario service providers from 2010 to 2012.
- In August 2014, charges of practicing polygamy were laid against two community leaders of the Fundamentalist Church of Jesus Christ of the Latter-Day Saints in Creston, British Columbia.

The proposed amendments in Bill XX take action to protect Canadians, particularly women and girls, from early and forced marriage and other harmful cultural practices, so that they can fully participate in our free and democratic society.

Bill XX – the *Zero Tolerance for Barbaric Cultural Practices Act* - Detailed Backgrounder: Legislative Amendments

To deliver on the commitment in the 2013 Speech from the Throne, the Government has introduced a comprehensive package of legislative amendments to ensure that early and forced marriage and other harmful cultural practices, including polygamy and so-called honour-based violence, do not occur on Canadian soil. The Government introduced Bill XX, the *Zero Tolerance for Barbaric Cultural Practices Act* on October XX, 2014, which proposes amendments to the *Immigration and Refugee Protection Act*, the *Civil Marriage Act* and the *Criminal Code*, and consequential amendments to three Acts - the *Federal Law–Civil Law Harmonization Act, No. 1*, the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act*.

1) *Immigration and Refugee Protection Act*

The bill would introduce a new ground of inadmissibility to the *Immigration and Refugee Protection Act* (proposed section 41.1) for any foreign national and permanent resident who practices or intends to practice polygamy in Canada.

This new provision will strengthen the availability of tools within the immigration program to prevent polygamy and to take enforcement action against foreign nationals and permanent residents where evidence is available, and builds on the current Canadian criminal law ban on polygamy.

2) *Civil Marriage Act*

The bill would amend the *Civil Marriage Act* to legislate across Canada two existing legal requirements for a valid marriage – the requirement for free and enlightened consent (proposed section 2.1), and the requirement for ending an existing marriage prior to entering another (proposed section 2.3). These legal requirements currently exist in federal legislation that applies in the Province of Quebec only (sections 5 and 7 of the *Federal Law–Civil Law Harmonization Act, No. 1*), and in the common law (court decisions) for residents of other provinces and territories.

The bill would also establish a new national minimum age for marriage of 16, below which no marriage would be valid (proposed section 2.2). This legal requirement currently exists only in federal legislation that applies in the Province of Quebec (section 6 of the *Federal Law–Civil Law Harmonization Act, No. 1*). The common law (court decisions) for residents of other provinces and territories is sometimes interpreted as setting a minimum age of 14 for boys and 12 for girls, and historically sometimes as low as age 7. This proposed amendment would provide equal protection to all Canadian children by setting the minimum age at age 16 across Canada.

Legal protections for children between the new minimum age for marriage and the age of majority, set by the province or territory of residence at 18 or 19 years of age, are

found in provincial and territorial marriage laws. These laws currently require parental consent (and in some instances also the consent of a judge) to ensure that the child fully understands the legal consequences of marriage, in those exceptional circumstances where a child would be mature enough to marry. The Minister of Justice Canada has asked his provincial and territorial counterparts to consider making complementary amendments to their marriage laws to ensure that children are uniformly protected by requiring a judge to make the proper inquiries in the case of any marriage involving a child between the age of 16 and the age of majority.

3) *Criminal Code*

The bill would also amend the *Criminal Code* to provide additional protections building on the proposed amendments to the *Civil Marriage Act* to prevent forced or underage marriages. The proposed amendments would:

- amend the existing offence of a legally-authorized officiant who knowingly solemnizes a marriage contrary to provincial law (section 295) to clarify that this also includes a marriage that is contrary to federal law, including a forced marriage or a marriage under the age of 16 – this offence is punishable by up to two years in prison;
- create a new offence prohibiting the active and knowing participation in a forced marriage ceremony by any person, including parents or other family members of the person being forced to marry, or the performance of a forced marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.1) - this offence would be punishable by a maximum of five years' imprisonment;
- create a new offence prohibiting the active and knowing participation in ^aan marriage ceremony involving a person under the age of 16, by any person, including parents or other family members of the person who is underage, or the performance of an underage marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.2) - this offence would be punishable by a maximum of five years' imprisonment;
- extend the existing offence of removing a child from Canada for the purpose of having certain offences committed abroad to include the removal of a child for the purpose of a forced marriage or a marriage under the age of 16 outside of Canada (proposed paragraph 273.3(1)(d)) – this offence is punishable by a maximum of five years' imprisonment; and
- introduce a new peace bond that gives the court power to impose conditions on a person where there are reasonable grounds to fear that a forced marriage or a marriage under the age of 16 will otherwise occur (proposed section 810.02).

The bill would also amend the *Criminal Code* to address concerns that the defence of provocation (section 232) has been raised in several so-called honour killing cases in Canada, in which accused persons who killed either their wives or their sister (along with their sister's fiancé) alleged that the killing was motivated by their perception that the victims had brought dishonour to them or their family through their conduct or

choices, taking into account their culture's views about appropriate gender roles and behaviour.

The defence of provocation currently allows a person found to have committed murder (which carries a mandatory sentence of life in prison and minimum parole ineligibility periods) to seek a conviction of manslaughter instead (with no minimum sentence unless a firearm is used) by arguing that the victim's conduct provoked them to lose self-control and kill.

Currently, any conduct by the victim – including insults and other forms of offensive behaviour that are lawful – can potentially qualify as provocation if it is found to be sufficient to cause an ordinary person to lose self-control, the accused was not expecting it and the killing was sudden. The proposed amendment would limit the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family honour or reputation, cannot be used to reduce murder to manslaughter; only conduct by the victim that amounts to a relatively serious criminal offence (i.e. an offence under the *Criminal Code* punishable by at least 5 years in prison) could be argued to be "provocation" for the purposes of the defence.

4) Consequential amendments

The bill also proposes consequential amendments to three Acts.

1. *Federal Law–Civil Law Harmonization Act, No. 1*

The bill proposes to repeal sections 4 to 7 of the *Federal Law–Civil Law Harmonization Act, No. 1*. With the amendments to the *Civil Marriage Act*, which would apply across Canada, the specific provisions of the *Federal Law–Civil Law Harmonization Act, No. 1* would no longer be needed.

2. *Prisons and Reformatories Act*

The bill creates a new peace bond in the *Criminal Code* (section 810.02) and provides that where a defendant refuses to be bound by the peace bond, the court may commit them to imprisonment for a term of up to 12 months. However, this is not an actual offence in the *Criminal Code* but rather a unique form of interim imprisonment used in exceptional circumstances. In order for a person who breaches a peace bond to be lawfully held in a provincial jail, section 810.02 needs to be listed under subsection 2(1) of the *Prison and Reformatories Act* (PRA) in the same manner as the existing peace bond provisions that are already listed. The bill also proposes to amend the subsection 2(1) of the PRA, to include a reference to two other peace bonds (sections 83.3 and 810.01) which were omitted when these peace bonds were introduced.

3. *Youth Criminal Justice Act*

Subsection 14(2) and paragraph 142(1)(a) of the *Youth Criminal Justice Act* (YCJA) provide jurisdiction to a youth justice court to issue *Criminal Code* peace bonds and set out the proceedings for peace bonds under the YCJA. The bill proposes to amend both provisions in the YCJA to include a reference to the new forced or underage peace bond provision in section 810.02 of the *Criminal Code*.

Bill XX – the *Zero Tolerance for Barbaric Cultural Practices Act* **Detailed Backgrounder: Related Canadian Initiatives**

The bill would complement existing Canadian initiatives, both at home and abroad, to put an end to cultural practices that go against Canadian values; cause harm to women and girls; and prevent their full participation in society. These practices, which include early and forced marriage, honour-based violence and female genital mutilation/cutting, have no place in Canada's free and democratic society. Some of Canada's initiatives to end these practices are set out below.

Canada on the International Stage

Canada has made ending child, early and forced marriage (CEFM) a foreign policy and development priority. For example:

- Canada spearheaded the initiative to establish the International Day of the Girl Child, which focused on child, early and forced marriage in 2012, its first year.
- In October 2013, Canada announced \$5 million in new money to address the causes and consequences of CEFM around the world. These funds were used for programs in Afghanistan, Ethiopia, Ghana, Somalia, and Zimbabwe.
- In July 2014, Canada announced a contribution of \$20 million over two years to UNICEF toward ending CEFM. The UNICEF project aims to accelerate the movement to end child marriage in Bangladesh, Burkina Faso, Ethiopia, Ghana, Yemen and Zambia.
- Also in July 2014, Canada committed institutional support to the Royal Commonwealth Society (RCS) in the efforts of RCS to raise awareness in Commonwealth countries about the need to end CEFM.
- In addition, Canada contributes to efforts to combat female genital mutilation (FGM) by working with UN agencies, and bilaterally with other countries supporting projects to address violence against women and eliminate harmful practices like FGM.

Canada at home

Canada has taken action to protect vulnerable Canadians, particularly women and girls, from early and forced marriage and other harmful cultural practices. For example:

- Status of Women Canada (SWC) has provided support in excess of \$146 million since 2007, to efforts to end violence against women, enhance women and girls' economic security and foster their participation in leadership positions, including over \$70 million for projects to end violence against women and girls, of which \$2.8 million went to projects that address harmful cultural practices such as "honour" based violence and forced marriage.
- The Department of Justice Canada (Justice) and SWC co-chair the Interdepartmental Working Group on Early and Forced Marriage, "Honour" Based

Violence and Female Genital Mutilation/Cutting, composed of representatives from 13 federal departments and agencies, which conducts outreach with provincial and territorial departments and agencies as well as non-government organizations.

- Since 2009, Justice has held six sector-specific workshops on forced marriage and honour-based violence with police, Crowns, victim services, child protection officials and shelter workers, to assist in front-line capacity-building. Justice also funded research papers on forced marriage and honour killings; included specific information on these forms of family violence in two public legal education pamphlets (one of which – *Abuse is Wrong in Any Language* – is available in 12 languages); and funded a variety of projects to prevent and respond to forced marriage and honour-based violence.
- The RCMP, in partnership with Justice, has developed a web-based training on "honour" based violence and forced marriage, which will be made available to all RCMP officers in 2014.
- The Department of Foreign Affairs, Trade and Development (DFATD) has created a Vulnerable Children's Consular Unit that assists with consular cases involving victims of forced marriage of all ages; provides specialized training for consular and front-line staff abroad; and works with Canadian organizations that assist victims upon their return to Canada. The Unit has also enhanced and updated its guidance to staff on best practices to handle cases of forced marriage, and continues to work with partners, such as the UK, to support joint training events.
- The Public Health Agency of Canada (PHAC) funds the Family-Centred Maternity and Newborn Care (FCMNC) National Guidelines, which aim to assist health professionals, policy makers, program planners, administrators and families. Female genital mutilation is addressed in chapters on preconception care, care during pregnancy, and care during labour and birth; the Guidelines stress the need for culturally safe and sensitive care.

The Government of Canada has shared jurisdiction with the provinces in preventing and responding to family violence, including early and forced marriage, polygamy, "honour" based violence and female genital mutilation/cutting. The provinces are responsible for the investigation and prosecution of the criminal offences associated with these forms of family violence. They are also responsible for issuing marriage licences, victim services, child protection, education, health and social services. Many have taken action to protect Canadians from these harmful cultural practices. For example, some city police forces have provided training on assessing the risks of honour crimes.

Many Canadian non-governmental organisations (NGOs) and community groups provide front-line assistance to victims of forced marriage and so-called honour-related violence, conduct studies and raise awareness of the harms of these forms of violence. For example, the South Asian Legal Clinic of Ontario (SALCO) released their study entitled *Who / If / When to Marry: The Incidence of Forced Marriage in Ontario* in 2013.

The Government of Canada will continue to work in concert with its partners to ensure that Canadians are protected from these harmful forms of family violence.

Assad, Michael

From: Blackell, Gillian
Sent: 2014-Oct-16 12:56 PM
To: Nesbitt, Scott
Cc: Hébert, Nathalie; Soyez, Louise; Assad, Michael; Hitch, Lisa; Klineberg, Joanne
Subject: RE: EFM

Yes it does. We will send it up.

From: Nesbitt, Scott
Sent: 2014 Oct 16 12:55 PM
To: Blackell, Gillian
Cc: Hébert, Nathalie; Soyez, Louise; Assad, Michael; Hitch, Lisa; Klineberg, Joanne
Subject: RE: EFM

It would be helpful to have the package we sent to CIC as soon as possible, and then the CIC consolidated package when it is available.

Does the package we sent address the three points I had mentioned in the initial email below?

Thanks,

Scott

From: Blackell, Gillian
Sent: Thursday, October 16, 2014 12:48 PM
To: Nesbitt, Scott
Cc: Hébert, Nathalie; Soyez, Louise; Assad, Michael; Hitch, Lisa; Klineberg, Joanne
Subject: RE: EFM

We have the copy that we sent to CIC last week – but they have not yet sent it up for approvals. As a result, CIC may propose changes to it. I believe that they have additional Qs and As that they will also add to the package.

Would you like the package we sent or would you rather wait until CIC has fully consolidated?

Cheers,
Gillian

From: Nesbitt, Scott
Sent: 2014 Oct 16 12:08 PM
To: Blackell, Gillian
Cc: Hébert, Nathalie; Soyez, Louise; Assad, Michael; Hitch, Lisa; Klineberg, Joanne
Subject: RE: EFM

Hi Gillian – do we have a copy of the revised and consolidated Qs&As yet?

Scott

From: Blackell, Gillian
Sent: Friday, October 10, 2014 4:57 PM
To: Nesbitt, Scott

Cc: Hébert, Nathalie; Soyez, Louise; Assad, Michael; Hitch, Lisa; Klineberg, Joanne

Subject: RE: EFM

Hi Scott,

We received your comments on the additional Qs and As and will revise accordingly.

With respect to the original Qs and As package, we sent over the change to the question on the CMA (with respect to the word "replacing") and we provided the changes to the consequential amendments (which incidentally are included in the additional Qs & As). We were unaware of the last request to simplify the explanation related to the CMA changes. We will certainly address this.

We will follow-up next week with the consolidated and revised Qs and As.

Happy Thanksgiving all

Cheers,

Gillian

Gillian Blackell, B.A., LL.B., LL.M.

Senior Legal Counsel / Avocate-conseil

Family, Children and Youth Section / Section de la famille, des enfants et des adolescents

Department of Justice Canada / Ministère de la Justice Canada

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From: Nesbitt, Scott

Sent: 2014 Oct 10 4:42 PM

To: Blackell, Gillian

Cc: Hébert, Nathalie; Soyez, Louise; Assad, Michael

Subject: EFM

Hi Gillian,

I have provided some comments on the additional Qs&As and provided them to Louise. They are all fairly minor, and should be relatively straightforward to address.

Once CIC incorporates our additional Qs&As and the changes that you had suggested to existing Qs&As are made, can we please get a copy of the consolidated & revised Qs&As to share with our MO?

Many thanks,

s.21(1)(a)

s.21(1)(b)

s.23

Scott Nesbitt
Counsel / Avocat

Office of the Deputy Minister of Justice and Deputy Attorney General of Canada
Bureau du sous-ministre de la Justice et sous-procureur général du Canada
East Memorial Building, Room 4089
284 Wellington Street, Ottawa, Ontario, K1A 0H8

Tel: (613) 957-1524 / Fax: (613) 941-2279 / email: scott.nesbitt@justice.gc.ca

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Gauthier, Amy-Lyne

From: Assad, Michael
Sent: Friday, October 17, 2014 2:40 PM
To: Assad, Michael; * CPAU Group; Lafleur, Eric; Nesbitt, Scott; [REDACTED]
Subject: RE: Zero Tolerance for Barbaric Cultural Practices - NOVEMBER 5
Importance: High

Good afternoon,

s.19(1)

We have been advised that the introduction is now slated for Wednesday, November 5.

Thank you,

Michael

From: Assad, Michael
Sent: 2014-Oct-17 12:52 PM
To: * CPAU Group; Lafleur, Eric; Nesbitt, Scott; [REDACTED]
Subject: Zero Tolerance for Barbaric Cultural Practices
Importance: High

Good afternoon,

CIC has just advised that the introduction of the Forced Marriage Bill will not be taking place next week as originally planned.

I will keep you apprised of further developments.

Thank you,

Michael Assad
Senior Analyst / Analyste principal
Parliamentary Affairs Unit / Unité des affaires parlementaires

Ministerial Secretariat / Secrétariat ministériel
Justice Canada
284 Wellington, room / pièce 4256
Ottawa (Ontario) K1A 0H8

Tél. / Tel. : (613) 954-3232
BB: (613)797-2049
Télec. / Fax : (613) 957-8382
michael.assad@justice.gc.ca

Savard, Angela

From: McLeod, Ian W (COMMS)
Sent: 2014-Oct-24 3:43 PM s.19(1)
To: [REDACTED]
Subject: RE: Zero Tolerance
Attachments: A - News release NR_EFM Bill Tabling_v10 MO revisions CLEAN.docx; B - BG 1 - Overview of EFM Bill_v7 MO changes CLEAN.docx; C - BG 2 - IRPA and Polygamy_v7 MO changes CLEAN.docx; D - BG 3 - EFM - cases and research_v7 docx MO CLEAN.doc; E - BG 4 - EFM - OGD initiatives_v9 MO changes.doc; F - BG 5 - Infograph-current vs new approach_v6 MO changes CLEAN.doc

There are still small placemarkers in these versions, but here you go.

Ian W. McLeod
Policy Communications | Communication des politiques
Department of Justice Canada | Ministère de la Justice du Canada
iwmcLeod@justice.gc.ca
Telephone | Téléphone 613-617-8327
Facsimile | Télécopieur 613-954-0811
Government of Canada | Gouvernement du Canada

From: [REDACTED]
Sent: October-24-14 3:00 PM
To: McLeod, Ian W (COMMS)
Subject: RE: Zero Tolerance

Thanks Ian. Just two comments...

BG1

Second para: "To deliver on the its"
Third para: needs bullet

Can you send me clean copies when done? Tks!

From: McLeod, Ian W (COMMS)
Sent: Friday, October 24, 2014 11:22 AM
To: [REDACTED]
Subject: FW: Zero Tolerance

Hi [REDACTED],

I've put together responses to most of your questions and hopefully addressed your concerns. Please let me know if you have further changes/suggestions, or if these can go back to CIC. I get the impression there will be another round of approvals before these are final-final.

Thanks,
Ian

Ian W. McLeod
Policy Communications | Communication des politiques
Department of Justice Canada | Ministère de la Justice du Canada

iwmcleod@justice.gc.ca
Telephone | Téléphone 613-617-8327
Facsimile | Télécopieur 613-954-0811
Government of Canada | Gouvernement du Canada

From: [REDACTED]
Sent: October-20-14 7:22 PM
To: McLeod, Ian W (COMMS)
Cc: [REDACTED]
Subject: RE: Zero Tolerance

s.19(1)

Thanks Ian, attached are some comments. Let me know if you'd like to discuss any over the phone tomorrow.

Have a good evening!

[REDACTED]

From: McLeod, Ian W (COMMS)
Sent: Monday, October 20, 2014 1:20 PM
To: [REDACTED]
Subject: FW: Zero Tolerance

Good afternoon,

As discussed, here are the products for the *Zero Tolerance for Barbaric Cultural Practices Act* announcement. Please let me know if you have any concerns.

Thanks,
Ian

Ian W. McLeod
Policy Communications | Communication des politiques
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From: McLeod, Ian W (COMMS)
Sent: October-15-14 10:50 AM
To: [REDACTED]
Cc: Bolton, Kathy; Girouard, Christian
Subject: FW: Zero Tolerance - BG #2 (rev)

Good morning,

Here, for information and review, are most of the products for the *Zero Tolerance for Barbaric Cultural Practices* announcement and tabling next week. While it is a CIC lead, much of the content was developed here (and has been approved to DMO level). Please let me know if you have any concerns.

Thanks,

Ian

Ian W. McLeod
Senior Communications Advisor | Conseiller principal en communications
Policy Communications | Communication des politiques
Communications Branch | Direction des communications
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For immediate release

Protecting Canadians from Barbaric Cultural Practices

October XX, 2014 — Ottawa — Citizenship and Immigration Canada Minister Chris Alexander today tabled in the Senate a bill aimed at strengthening our laws to prevent barbaric cultural practices from happening on Canadian soil.

Commented [A1]: TBC

The *Zero Tolerance for Barbaric Cultural Practices Act* sends a clear message to those coming to this country that harmful cultural practices are unacceptable in Canada. These practices are incompatible with Canadian values and will not be tolerated.

The *Act* would amend the *Immigration and Refugee Protection Act* (IRPA), the *Civil Marriage Act* and the *Criminal Code*. It would provide more protection and support for vulnerable immigrants— primarily women and girls—including:

- Creating a new inadmissibility under IRPA that would render permanent residents and temporary residents inadmissible to Canada on the basis that they practice polygamy;
- Strengthening Canadian marriage laws by amending the *Civil Marriage Act* to nationally codify the existing legal requirements for "free and enlightened consent" for marriage, and for ending an existing marriage prior to entering another; and to establish a new national minimum age for marriage of 16;
- Helping to protect potential victims of early or forced marriages by creating a new specific court-ordered peace bond where there are grounds to fear that a person would commit a forced or early marriage offence, including mandatory passport surrenders to prevent a child from being taken out of the country;
- Criminalizing certain conduct related to early and forced marriage ceremonies in the *Criminal Code*, including the act of removing a child from Canada for the purpose of such marriages.
- Limiting the defence of provocation so that it would not apply in so-called "honour" killings and many spousal homicides; and
- Including consequential amendments to the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act* to include the new peace bond.

These changes build upon existing federal initiatives that are providing vital support, protection and services for immigrant women and girls.

Quick facts

Canada

- Globally, between 2004 and 2014, an estimated 100 million girls will have been forced to marry before their 18th birthday.
- The 2013 Speech from the Throne stated that: *"Sadly, millions of women and girls continue to be brutalized by violence, including through the inhumane practice of early and forced marriage. This barbarism is unacceptable to Canadians. Our Government will take steps to ensure that it does not occur on our soil."*
- For the purposes of this initiative, the term "barbaric cultural practices" encompasses forms of gender-based family violence, such as early, forced and polygamous marriage, female genital mutilation and "honour" based violence.
- In 2011, the Supreme Court of British Columbia upheld the constitutionality of the *Criminal Code* prohibition on polygamy (s.293) and found it consistent with the *Canadian Charter of Rights and Freedoms*.

Quotes

"With the *Zero Tolerance for Barbaric Cultural Practices Act*, we are strengthening our laws to protect Canadians and newcomers to Canada from barbaric cultural practices. We are sending a strong message to those in Canada and those who wish to come to Canada that we will not tolerate cultural traditions in Canada that deprive individuals of their human rights. Our government will continue to stand up for all victims of violence and abuse and take necessary action to prevent these practices from happening on Canadian soil."

Chris Alexander, Canada's Citizenship and Immigration Minister

"This government has been clear in its stand against polygamy and other barbaric practices that constitute gender-based violence. These important legislative changes build on the work that is already being done to make it clear to all Canadians that family violence, including violence committed in the name of so-called "honour", is unacceptable. This package includes important tools to prevent early and forced marriages and to protect victims."

Peter MacKay, Minister of Justice and Attorney General of Canada

"As we prepare to mark International Day of the Girl on October 11th, this new legislation reaffirms our Government's leadership efforts in ending violence against women and girls. This includes our investments through Status of Women Canada to give communities the tools they need to end barbaric cultural practices." (to be updated)

Dr. K. Kellie Leitch, Minister of Labour and Minister of Status of Women

"Harmful traditional practices have negative physical and mental health impacts, which are a matter of public health concern. Our Government is committed to providing healthcare professionals with information and guidance to help ensure that vulnerable women and children get the support they need." (Draft - TBC)

Commented [j2]: Have their depts. Seen the quotes or recommended them?

Rona Ambrose, Minister of Health

Related products

Backgrounders:

- 1 – Strengthening Laws to Protect Canadians from Barbaric Practices
- 2 – Zero Tolerance for Barbaric Cultural Practices Act – Polygamy and changes to the IRPA
- 3 – Why we need the Zero Tolerance for Barbaric Cultural Practices Act – research and cases
- 4 – Key federal initiatives protecting and supporting vulnerable women and girls
- 5 – What will the Zero Tolerance for Barbaric Cultural Practices Act do? The current approach versus proposed new approach (infographic)

Associated links

Citizenship and Immigration Canada:

Welcome to Canada: <http://www.cic.gc.ca/english/resources/publications/welcome/index.asp>

Discover Canada:

<http://www.cic.gc.ca/english/resources/publications/discover/index.asp>

Information for sponsored spouses or partners:

<http://www.cic.gc.ca/english/resources/publications/family-sponsorship.asp>

Department of Justice Canada:

Abuse is Wrong in any language

Department of Foreign Affairs, Trade and Development:

Forced Marriage: <http://travel.gc.ca/assistance/emergency-info/forced-marriage>

Marriage force: <http://voyage.gc.ca/assistance/info-d-urgence/mariage-force>

Photos of Minister Alexander available at:

<http://www.cic.gc.ca/english/department/media/photos/index.asp>

– 30 –

Contacts

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Media Relations
Department of Justice
613-957-4207

DRAFT



BACKGROUND

Draft

BG 3 – Zero Tolerance for Barbaric Cultural Practices Act –Research and Cases–

To deliver on the commitment in the 2013 Speech from the Throne, the Government introduced a comprehensive package of legislative amendments on October 9, 2014, to ensure that early and forced marriage and other harmful cultural practices, including polygamy and so-called honour-based violence, do not occur on Canadian soil and that vulnerable Canadians and those coming to Canada are protected from these practices.

Newcomer and immigrant women can face additional barriers in protecting themselves and seeking assistance when compared to women born in Canada. These challenges may include: isolation, lack of language proficiency; lack of awareness of rights; fear of immigration consequences; lack of economic independence and concern about retaliation for seeking help or alerting the authorities.

Early and forced marriage, polygamy and so-called “honour” based violence can have severe and even fatal consequences. These cultural practices, which go against Canadian values and many of which are in violation of Canada’s international human rights commitments, will not be tolerated in Canada.

Research and these cases, among others, provide clear examples of the need to ensure that the immigration system does not facilitate the occurrence of such barbaric practices on Canadian soil:

There are more than 1,000 residents in the polygamous community of Bountiful, B.C., some of whom may be foreign nationals and are alleged to have entered Canada as visitors from the United States to “marry” Canadian residents. Winston Blackmore, the former leader of the Fundamentalist Church of Jesus Christ of the Latter-Day Saints in Bountiful has publicly declared Canada a “safe haven for polygamists”.

In August 2013, a study by the South Asian Legal Clinic of Ontario found that 219 forced marriage cases were dealt with by Ontario service providers from 2010 to 2012.



In 2000, a young British Columbia woman, Jaswinder Sidhu, was murdered because she chose to secretly marry the man she loved and not the person chosen for her by her family.

In 2009, Hasibullah Sadiqi was convicted of the 2006 first degree murder of his sister, Khatera, and her fiancé Feroz Mangal, who had become engaged without the prior approval of her father. Mr. Sadiqi raised the defence of provocation, alleging that he killed his sister and her fiancé in the "heat of passion" in response to things said by Mr. Mangal that Mr. Sadiqi found offensive toward his father and their family. The defence was rejected.

On April 17, 2009, a 19 year old Montréal woman, Zainab Shafia, fled her family home because her parents were trying to force her to marry a man she did not want to marry. Three months later, her body and the bodies of her two sisters and their father's first wife from a polygamous marriage, were found in a Kingston canal lock.

On January 2, 2010, a young Calgary woman was beaten by her uncle and three cousins for refusing to marry the man her uncle had chosen for her.



Citizenship and Immigration Minister Chris Alexander held three roundtables across Canada in January 2014 on violence against women in the immigration context.

A 2014 CIC questionnaire sent by Citizenship and Immigration Canada to Canadian missions abroad showed that:

- Victims of suspected cases of forced marriage are usually female members of the Family Class or Refugees;
- Certain missions have seen cases of early marriage, primarily in the Family Class. Young spouses are generally females from rural or remote areas with lower levels of education and coming from low socio-economic backgrounds.

The Department of Foreign Affairs, Trade and Development has reported approximately 100 requests for consular assistance in forced marriage cases since 2009.





Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

BACKGROUND

Draft

BG 1 - An Overview of the Zero Tolerance for Barbaric Cultural Practices Act

In Canada, men and women are equal under the law. Canada's openness and generosity does not extend to early and forced marriage, polygamy or other types of barbaric cultural practices that tolerate any type of violence against women or girls, including spousal abuse, violence in the name of so-called "honour", or other, mostly gender-based violence. Those found guilty of these crimes are severely punished under Canada's criminal laws.

To deliver on its commitment to stand up for victims of violence and abuse and to send a strong message to those in Canada and those wishing to come to Canada that barbaric cultural practices will not be tolerated on Canadian soil, the Government is proposing to amend five deferral statutes:

Immigration and Refugee Protection Act

Address polygamy in Canada through the creation of a new polygamy-specific inadmissibility in the *Immigration and Refugee Protection Act*, which would:

- Prohibit temporary residents and permanent residents from practicing polygamy in Canada; and
- Provide for the removal of non-citizens who practice polygamy in Canada without the need for a Criminal Code conviction.

Civil Marriage Act

Commented [A1]: Provided by DOJ

Make amendments to the *Civil Marriage Act* to:

- Legislate across Canada two existing legal requirements for a valid marriage – the requirement for free and enlightened consent (proposed section 2.1), and the requirement for ending an existing marriage prior to entering another (proposed section 2.3). These legal requirements currently exist in federal legislation that applies in the Province of Quebec only (sections 5 and 7 of the *Federal Law–Civil Law Harmonization Act, No. 1*), and in the common law (court decisions) for residents of other provinces and territories.

- The bill would also establish a new national minimum age for marriage of 16, below which no marriage could be contracted (proposed section 2.2). This legal requirement currently exists only in federal legislation that applies in the Province of Quebec (section 6 of the *Federal Law-Civil Law Harmonization Act, No. 1*). The common law (court decisions) applying to residents of other provinces and territories is sometimes interpreted as setting a minimum age of 14 for boys and 12 for girls, and historically sometimes as low as age 7. This proposed amendment would provide equal protection to all Canadian children by setting the minimum age to 16 across Canada.
- Additional legal protections for children between the new minimum age for marriage and the age of majority, set by the province or territory of residence at 18 or 19 years of age, are found in provincial and territorial marriage laws. These laws currently require parental consent (and in some instances also the consent of a judge) to ensure that the child fully understands the legal consequences of marriage, in those exceptional circumstances where a child would be mature enough to marry. The Minister of Justice Canada has asked his provincial and territorial counterparts to consider making complementary amendments to their marriage laws to ensure that children are uniformly protected by requiring a judge to make the proper inquiries, in addition to parental consent, in the case of any marriage involving a child between the age of 16 and the age of majority.

Criminal Code

Commented [A2]: Provided by DOJ

Amend the *Criminal Code* to provide additional protections building on the proposed amendments to the *Civil Marriage Act* to prevent forced or underage marriages. The proposed amendments would:

- amend the existing offence for a legally-authorized officiant who knowingly solemnizes a marriage contrary to provincial law (section 295) to clarify that this also includes a marriage that is contrary to federal law, including a forced marriage or a marriage under the age of 16 – this offence is punishable by up to two years in prison;
- create a new offence prohibiting the active and knowing participation in a forced marriage ceremony by any person, including parents or other family members of the person being forced to marry, or the performance of a forced marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.1) - this offence would be punishable by a maximum of five years imprisonment;
- create a new offence prohibiting the active and knowing participation in a marriage ceremony involving a person under the age of 16, by any person, including parents or other family members of the person who is underage, or the performance of an underage marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.2) - this offence would be punishable by a maximum of five years imprisonment;
- extend the existing offence of removing a child from Canada for the purpose of having certain offences committed abroad to include the removal of a child for the purpose of a forced marriage or a marriage under the age of 16 outside of Canada (proposed paragraph 273.3(1)(d)) – this offence is punishable by a maximum of five years imprisonment, and

- introduce a new peace bond that gives the court power to impose conditions on a person where there are reasonable grounds to fear that a forced marriage or a marriage under the age of 16 will otherwise occur (proposed section 810.02).

The bill would also amend the *Criminal Code* to address concerns that the defence of provocation (section 232) has been raised in several so-called "honour" killing cases in Canada. In these cases, accused persons who killed either their wife, sister, sister's fiancé, alleged that the killing was motivated by their perception that the victims had brought dishonour to them or their family through their conduct or choices, taking into account their cultural views about appropriate gender roles and behaviour.

The defence of provocation currently allows a person found to have committed murder – which carries a mandatory sentence of life in prison and minimum parole ineligibility period – to seek a conviction of manslaughter instead, with no minimum sentence unless a firearm is used, by arguing that the victim's conduct provoked them to lose self-control and kill.

Currently, conduct by the victim – including insults and other forms of offensive behaviour that are lawful – can potentially qualify as provocation if it is found to be sufficient to cause an ordinary person to lose self-control, if the accused was not expecting it, and if the killing was sudden. The proposed amendment would limit the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family "honour" or reputation, cannot be used to reduce murder to manslaughter. Only conduct by the victim that amounts to a relatively serious criminal offence (i.e. an offence under the *Criminal Code* punishable by at least five years in prison) could be argued to be "provocation" for the purposes of the defence.

Consequential amendments

Commented [A3]: Provided by DOJ

Consequential amendments resulting from the above-mentioned changes will also be made to the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act*, primarily to include references to the new peace bond.



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

BACKGROUND

Draft

BG 4 - Key Federal Initiatives Protecting and Supporting Vulnerable Women and Girls

The bill would complement existing Canadian initiatives, both at home and abroad, to put an end to cultural practices that go against Canadian values because they cause harm to women and girls and prevent their full participation in society. These practices, which include early and forced marriage, "honour"-based violence and female genital mutilation/cutting, have no place in Canada's free and democratic society. Some of Canada's initiatives to end these practices are set out below.

Canada on the International Stage¹

Commented [A1]: This section provided by DOJ

Canada has made ending child, early and forced marriage (CEFM) a foreign policy and development priority and is intensifying programming and advocacy efforts to address child, early and forced marriage. For example:

- Canada spearheaded the initiative to establish the International Day of the Girl Child, which focused on child, early and forced marriage in 2012, its first year.
- In October 2013, Canada announced \$5 million in new money to address the causes and consequences of CEFM around the world. These funds were used for programs in Afghanistan, Ethiopia, Ghana, Somalia, and Zimbabwe.
- On July 4, 2014, Minister Baird announced that Canada is contributing \$20 million over two years to UNICEF toward ending child, early and forced marriage. The UNICEF project aims to accelerate the movement to end child marriage in Bangladesh, Burkina Faso, Ethiopia, Ghana, Yemen and Zambia by supporting efforts in these countries to strengthen programming and political support to end the practice.
- Also in July 2014, Canada committed institutional support to the efforts of the Royal Commonwealth Society to raise awareness in Commonwealth countries about the need to end CEFM.
- Canada has played an important role in bringing world attention and action to this issue of child, early and forced marriage. For example, for the second year, Canada and Zambia will lead a United General Assembly resolution on child, early and forced marriage in the fall of 2014.

- Canada contributes to efforts to combat female genital mutilation/cutting (FGM) by working with UN agencies, and bilaterally with other countries supporting projects to address violence against women and eliminate harmful cultural practices like FGM.

Canada at home

Commented [A2]: Following sections provided by each department

Canada has taken action to protect vulnerable Canadians, particularly women and girls, from early and forced marriage and other harmful cultural practices. For example:

Department of Justice Canada

- Justice Canada and Status of Women Canada co-chair an **interdepartmental working group** on early and forced marriage, "honour"-based violence and female genital mutilation/cutting. The working group has participation from 15 federal departments and agencies and acts as a focal point for collaborative actions.
- Since 2009, Justice Canada has held six **sector-specific workshops** on forced marriage and honour-based violence with police, Crowns, victim services, child protection officials and shelter workers, to assist in front-line capacity-building.
- Justice Canada also funded research papers on forced marriage and "honour" killings; included specific information on these forms of family violence in two public **legal education pamphlets** (one of which – *Abuse is Wrong in Any Language* – is available in 12 languages); and funded a variety of projects to prevent and respond to forced marriage and "honour"-based violence.
- Justice Canada operates an **emergency fund for Canadians who are victimized abroad** either through homicide, sexual assault, aggravated assault or assault with serious personal violence, including against a child.

Citizenship and Immigration Canada (CIC)

- Many **CIC-funded organizations** provide targeted programming designed for specific groups, including women. Newcomer women may benefit from blended or women-only workshops, offering an inclusive and open environment to learn and discuss job search strategies and basic information needed to obtain meaningful employment.
- In addition, **women-only language classes** are available for immigrant and refugee women. CIC funded language classes cover issues such as family violence, spousal abuse, women's rights, legal rights and responsibilities, and health care, and include bridging or referral to other available services in the community.
- Both Canada's citizenship study guide "**Discover Canada**" and the "**Welcome to Canada**" orientation guide were recently updated to reflect the fact that Canada's openness and generosity do not extend to harmful cultural practices such as forced marriage or other forms of gender-based family violence.

- CIC also disseminates the brochure "**Information for Sponsored Spouses or Partners**" to sponsored spouses and partners who are subject to the conditional permanent residence measure. The brochure provides information for those who are subject to the condition and who are victims of abuse or neglect, advising them that they do not have to remain in an abusive situation and informing them how to contact CIC and others and where they can find help.

Department of Foreign Affairs, Trade and Development (DFATD)

- **Consular Services** are available **24 hours a day** to **Canadian victims** of forced marriage abroad. DFATD provides **information about consular assistance** available to travellers at risk of forced marriage on its travel.gc.ca website.
- Increased awareness building and concrete programming efforts to combat child, early and forced marriage from a human rights and international development perspective will also support its reduction domestically.

Status of Women Canada

- Status of Women Canada (SWC) launched a call for proposals in 2012 which focused on preventing and eliminating violence against women and girls, including the specific area of violence committed in the name of "honour". It has also provided funding to NGOs to carry out projects addressing forced marriage. Since 2007, a total of over \$2.8M has been approved through SWC for community-based projects that address harmful cultural practices such as "honour" based violence and forced marriage.

The Royal Canadian Mounted Police (RCMP)

- The RCMP has developed **on-line training on forced marriage and "honour"-based violence** for RCMP officers and plans to make it available to municipal police and other agencies through the Canadian Police Knowledge Network in 2014.

Health Canada/Public Health Agency of Canada (HC/PHAC)

- PHAC will develop guidance on harmful cultural practices for health care and social service professionals, and educational and awareness materials for community-based frontline workers, victims and their children.

Commented [A3]: Still TBC



BACKGROUND

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BG 2 - Zero Tolerance for Barbaric Cultural Practices Act – Polygamy and changes to the Immigration and Refugee Protection Act

A polygamous marriage is defined as one in which an individual has more than one spouse at the same time. It is an offence, under section 293 of the *Criminal Code*, to practice polygamy or enter into a polygamous union in Canada. The constitutionality of the provision was upheld by the Supreme Court of British Columbia in 2011.

There is an increasing global consensus that polygamy is fundamentally harmful to women, children and to the wider society, because it creates great potential for the exploitation and abuse of female spouses and underage girls. Human rights and women's rights organizations have consistently called for the abolition of polygamy. In spite of this, some countries allow such practices and others, like Canada, face challenges in eliminating it.

The *Zero Tolerance for Barbaric Cultural Practices Act* proposes the creation of a new inadmissibility for polygamy in the *Immigration and Refugee Protection Act* (IRPA).

This provision would increase the Government of Canada's ability to prevent polygamy from occurring in Canada. While current IRPA provisions require foreign nationals wishing to become permanent residents to have only one spouse, once in Canada it is difficult to find these individuals inadmissible. A criminal conviction or finding of misrepresentation is currently required before a person practicing polygamy can be found inadmissible.

The changes would mean that a polygamist permanent resident or foreign national who is or will be physically present in Canada with even one of their polygamous spouses would be considered to be practicing polygamy in Canada. The permanent resident or foreign national could be found inadmissible *on that basis alone*, without requiring evidence that the person misrepresented their situation or has a criminal conviction.

The new inadmissibility would apply in both the temporary and permanent immigration streams. While in the permanent stream, permanent residents will be required to stop practicing polygamy and will only be permitted to immigrate with one monogamous spouse. In the temporary stream, visitors, students and workers who practice polygamy abroad would be admissible to Canada only as long as they travel without any of their spouses. Those who were to come with even one spouse, or join a polygamous spouse in Canada, would be considered to be practicing polygamy on Canadian soil and would be inadmissible under IRPA.



BACKGROUND

Draft

BG 5 - A comparative before and after view of changes being proposed in the *Zero Tolerance for Barbaric Cultural Practices Act*

BEFORE	AFTER
Polygamy – Current Admissibility Provisions under IRPA	Polygamy – proposed amendments to admissibility provisions under IRPA
<p>Permanent Resident</p> <p>In the permanent residency stream, a foreign national, when entering Canada and becoming a permanent resident is permitted to have only one spouse. This requires an individual in a polygamous relationship to convert their marriage to a monogamous relationship.</p> <p>Some permanent resident applicants may try to circumvent the system by taking on an additional spouse at a later date, after they arrive in Canada.</p> <p>In Canada, the permanent resident could only be found inadmissible for practicing polygamy if they are convicted in Canada of the criminal offence described under s. 293 of the <i>Criminal Code</i> and receive a term of imprisonment of more than six months. A permanent resident may also be found inadmissible for misrepresentation under immigration law, if they lied about being involved in a polygamous relationship when they became a permanent resident.</p>	<p>In the permanent residency stream, a foreign national who practices polygamy would still be required to convert their polygamous marriage to a monogamous one before becoming a permanent resident.</p> <p>However, once in Canada, a permanent resident who starts or resumes a polygamous relationship could be found inadmissible under the new provision. Also, given IRPA would have a specific provision for polygamy, removal proceedings could be initiated without requiring a finding of either criminality or misrepresentation.</p>
<p>Temporary Resident</p> <p>A temporary resident who practices polygamy in their country of origin is generally allowed to enter with only one spouse at the time of seeking entry.</p>	<p>A foreign national seeking temporary residence who practices polygamy in their country of origin would be allowed to enter Canada only if they are travelling alone. The physical presence in Canada of two</p>

	individuals from a polygamous relationship will be considered as "practicing polygamy in Canada".
Civil Marriage Act	
<p>Legal Requirements to Marry The legal requirement for free and enlightened consent to marriage is currently contained in federal legislation that applies in the Province of Quebec only, and in the common law (court decisions) for residents of other provinces and territories.</p> <p>The minimum age of 16 for marriage, below which no marriage can be contracted, is currently contained in federal legislation that applies in the Province of Quebec only. For the other provinces and territories, the minimum age is not currently provided and there is some debate about the minimum age in the common law between age twelve for girls and fourteen for boys.</p> <p>The legal clarification that any previous marriage must be dissolved prior to a new marriage is currently contained in federal legislation that applies in the Province of Quebec only. (The requirement for monogamy already exists nationally in section 4 of the <i>Civil Marriage Act</i> and is reflected in sections 290, 291 & 293 of the <i>Criminal Code</i>.)</p>	<p>The legal requirement for free and enlightened consent to marriage would now apply nationally to all Canadian residents.</p> <p>A new national minimum age of 16 for marriage, below which no marriage can be contracted, would now apply to all Canadian residents. Legislation in the provinces and territories may set out additional requirements, such as parental consent and consent of the court, for marriages between the national minimum age and the age of majority.</p> <p>The legal clarification that any previous marriage must be dissolved prior to a new marriage would now apply nationally to all Canadian residents.</p>
Criminal Code	
<p>Early and Forced Marriage Family members can employ a range of techniques to force a marriage onto an unwilling person, both in the time leading up to the marriage and possibly also in connection with the marriage ceremony itself. Family members may also engage in similar conduct to cause an underage child to marry. Wherever the conduct involved amounts to an existing criminal offence – such as uttering threats, assault, or forcible confinement – it is subject to prosecution.</p>	Family members and others would be subject to prosecution where they actively and knowingly participate in a forced or early marriage ceremony , such as by transporting an unwilling or underage daughter to the ceremony or acting as a legal witness. A person who knowingly performs a forced or early marriage ceremony would also be subject to prosecution.
Removal of Child from Canada	Family members and others would be

<p>In a situation of a forced or early marriage, family members could be prosecuted for taking steps to remove a young person from Canada if the Crown could prove that they did so with the knowledge that, following a forced or early marriage ceremony abroad, the child would be subjected to a sexual offence.</p>	<p>subject to prosecution where they take steps to remove a young person from Canada specifically with the intent that they be subjected to a forced or early marriage abroad. The Crown would not have to prove that the family knew there would be a sexual offence following the marriage.</p>
<p>Peace Bond Where there are reasonable grounds to fear that a person – including family members – will cause personal injury to another person, they can be brought to court and ordered to enter into a Peace Bond (or court order) to keep the peace and be of good behaviour. Other conditions can be imposed, including that the person have no contact with the person who fears for their safety. A person subject to a peace bond could be prosecuted if they breach the order.</p>	<p>Where there are reasonable grounds to believe that a person will specifically aid or participate in a forced or early marriage ceremony involving someone else (for example, their child), or will take a young person out of Canada for the purposes of a forced or early marriage ceremony abroad, they could be brought to court and ordered to enter into a Peace Bond to keep the peace and be of good behaviour. A court would be empowered to make orders that could be particularly useful in specifically preventing an early or forced marriage, whether in Canada or abroad, such as ordering the person to surrender travel documents, to refrain from making arrangements or agreements in relation to the marriage, or to participate in a family violence counselling program.</p>
<p>Provocation Defence A person who is found to have committed murder can raise the defence of provocation where they killed the victim in the "heat of passion" brought on by a "wrongful act or insult" from the victim that would be sufficient to cause an ordinary person to lose self-control. Individuals who are prosecuted for murder in so-called "honour" killings can raise the defence, if they allege that the victim's conduct was so insulting and offensive to them and/or to their family's reputation that it caused them to kill in a state of rage.</p>	<p>The provocation defence would only be available to an accused found guilty of murder where the conduct of the victim that provoked the accused to kill amounted to a criminal offence punishable by five years or more in prison could qualify.</p>
<p>Where successful, provocation is a defence for murder that results in a conviction for manslaughter. Manslaughter carries a maximum punishment of life in prison, and no minimum punishment except if a firearm was used (four years).</p>	<p>A victim's personal choices about lifestyle or dating or marriage partners, including where such choices were conveyed in a manner perceived as insulting, could not qualify as provocation for the purposes of providing a defence to murder.</p>
<p>Consequential Amendments</p>	

<p>Criminal Code Paragraph 150.1(2.1)(b) of the <i>Criminal Code</i> provides an exception from criminal liability for what would otherwise be a listed sexual offence involving a child between the ages of 14 and 16 years if the complainant and the accused are married.</p> <p>Prisons and Reformatories Act Section 2 of the <i>Prisons and Reformatories Act</i> provides a definition of "prisoner", which in turn permits such persons to be lawfully held in a provincial jail.</p> <p>Youth Criminal Justice Act Subsection 14(2) of the <i>Youth Criminal Justice Act</i> gives jurisdiction to a youth justice court to make orders against young persons under the peace bond provisions of the Code.</p> <p>Subsection 142(1) of the <i>Youth Criminal Justice Act</i> provides that the provisions of Part XXVII of the <i>Criminal Code</i> apply to proceedings in respect of peace bonds against young persons.</p>	<p>The Bill proposes to repeal paragraph 150.1(2.1)(b) of the <i>Criminal Code</i>, to match the proposed amendments to the <i>Civil Marriage Act</i>, which will prohibit marriages below the age of 16.</p> <p>A person who breaches conditions imposed as part of a peace bond or where there is a fear that they may commit a forced or early marriage offence, could be lawfully held in a provincial jail.</p> <p>A youth justice court would also have jurisdiction to impose a new peace bond where there is a fear that a young person may commit a forced or early marriage offence.</p> <p>The new peace bond to prevent forced or early marriage, when ordered against a young person, would be governed by the provisions of Part XXVII of the <i>Criminal Code</i>, as is the case for other peace bonds.</p>
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Savard, Angela

From: McLeod, Ian W (COMMS)
Sent: 2014-Oct-27 5:11 PM s.19(1)
To: [REDACTED]
Cc: [REDACTED] Saville, Suesan; Girouard, Christian; Bolton, Kathy
Subject: RE: Zero Tolerance
Attachments: A - News release NR_EFM Bill Tabling_v11_MINO DOJ.docx; B - BG 1 - Overview of EFM Bill_v8_MINO_DOJ.doc; C - BG 2 - IRPA and Polygamy_v8_MINO_DOJ.docx; E - BG 3 - EFM - OGD initiatives_v10_MINO_DOJ.doc; F - BG 4 - Infograph-current vs new approach_v7_MINO_DOJ.doc

Tracking:	Recipient	Read
	[REDACTED]	
	Saville, Suesan	Read: 2014-10-28 9:47 AM
	Girouard, Christian	
	Bolton, Kathy	Read: 2014-10-27 5:14 PM

Good afternoon,

We've just received the roll-up of our changes and the CIC ministerial-level changes for final signoff. Please let me know if there are any further concerns ASAP (CIC has marked their changes in Track Changes format, and ours are highlighted in teal).

(They've also discarded the backgrounder on specific cases.)

Many thanks,
Ian

Ian W. McLeod
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For immediate release

Protecting Canadians Canada from Barbaric Cultural Practices

~~October-November X, 2014~~ — Ottawa — Citizenship and Immigration Canada Minister Chris Alexander today announced that the Government tabled in the Senate a bill aimed at that will strengthening our laws to prevent barbaric cultural practices from happening on Canadian soil.

The *Zero Tolerance for Barbaric Cultural Practices Act* sends a clear message to those coming to this country that harmful cultural practices are unacceptable in Canada. These practices are incompatible with Canadian values and will not be tolerated.

The Act would amend the *Immigration and Refugee Protection Act* (IRPA), the *Civil Marriage Act* and the *Criminal Code*. It would provide more protection and support for vulnerable immigrants— primarily women and girls—including:

- Creating a new inadmissibility under IRPA that would render permanent residents and temporary residents inadmissible to Canada on the basis that they practise polygamy;
- Strengthening Canadian marriage laws by amending the *Civil Marriage Act* to codify nationally the existing legal requirements for "free and enlightened consent" for marriage, and for ending an existing marriage prior to entering another, and to establish a new national minimum age for marriage of 16;
- Helping to protect potential victims of early or forced marriages by creating a new specific court-ordered peace bond where there are grounds to fear that a person would commit a forced or early marriage offence, including mandatory passport surrenders to prevent a child from being taken out of the country;
- Criminalizing certain conduct related to early and forced marriage ceremonies in the *Criminal Code*, including the act of removing a child from Canada for the purpose of such marriages;
- Limiting the defence of provocation so that it would not apply in so-called "honour" killings and many spousal homicides; and
- Including consequential amendments to the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act* to include the new peace bond.

These changes build upon existing federal initiatives that are providing vital support, protection and services for immigrant women and girls.

Quick facts

- Globally, between 2004 and 2014, an estimated 100 million girls will have been forced to marry before their 18th birthday.
- The 2013 Speech from the Throne stated that: "Sadly, millions of women and girls continue to be brutalized by violence, including through the inhumane practice of early and forced marriage. This barbarism is unacceptable to Canadians. Our Government will take

Canada

steps to ensure that it does not occur on our soil."

- For the purposes of this initiative, the term "barbaric cultural practices" encompasses forms of gender-based family violence, such as early, forced and polygamous marriage, female genital mutilation and "honour" based violence.

• Proposed legislative amendments fill gaps in existing legislation by strengthening existing inadmissibility provisions by:

- adding a new inadmissibility for polygamy; codifying existing requirements for consent and monogamy in marriage;
- setting a new national minimum age for marriage; and
- strengthening *Criminal Code* offences related to early or forced marriage and "honour-based" violence.

Commented [A1]: Removed as it repeats bullets from page 1 of NR.

• In 2011, the Supreme Court of British Columbia upheld the constitutionality of the *Criminal Code* prohibition on polygamy (s.293) and found it consistent with the *Canadian Charter of Rights and Freedoms*.

Quotes

"With the *Zero Tolerance for Barbaric Cultural Practices Act*, we are strengthening our laws to protect Canadians and newcomers to Canada from barbaric cultural practices. We are sending a strong message to those in Canada and those who wish to come to Canada that we will not tolerate cultural traditions in Canada that deprive individuals of their human rights. Our government will continue to stand up for all victims of violence and abuse and take necessary action to prevent these practices from happening on Canadian soil."

Chris Alexander, Canada's Citizenship and Immigration Minister

"This government has been clear in its stand against polygamy and other barbaric practices that constitute gender-based violence. These important legislative changes build on the work that is already being done to make it clear to all Canadians that family violence, including violence committed in the name of so-called "honour", is unacceptable. This package includes important tools to prevent early and forced marriages and to protect victims."

Peter MacKay, Minister of Justice and Attorney General of Canada

"As we prepare to mark International Day of the Girl on October 11th, this new legislation reaffirms our Government's leadership efforts in ending violence against women and girls. This includes our investments through Status of Women Canada to give communities the tools they need to end barbaric cultural practices." (to be updated)

Dr. K. Kellie Leitch, Minister of Labour and Minister of Status of Women

"Harmful traditional practices have negative physical and mental health impacts, which are a matter of public health concern. Our government is committed to providing healthcare professionals with information and guidance to help ensure that vulnerable women and children

get the support they need." (Draft - TBC)
Rona Ambrose, Minister of Health

Related products

Backgrounders:

- 1 – Strengthening Laws to Protect Canadians from Barbaric Practices
- 2 – Zero Tolerance for Barbaric Cultural Practices Act – Polygamy and changes to the IRPA
- 3 – Why we need the Zero Tolerance for Barbaric Cultural Practices Act – research and cases
- 4-3 – Key federal initiatives protecting and supporting vulnerable women and girls
- 6-4 – What will the Zero Tolerance for Barbaric Cultural Practices Act do? The current approach versus proposed new approach (infographic)

Associated links

Citizenship and Immigration Canada:

Welcome to Canada: <http://www.cic.gc.ca/english/resources/publications/welcome/index.asp>

Discover Canada:

<http://www.cic.gc.ca/english/resources/publications/discover/index.asp>

Information for sponsored spouses or partners:

<http://www.cic.gc.ca/english/resources/publications/family-sponsorship.asp>

Department of Justice Canada:

Abuse is Wrong in any language

Department of Foreign Affairs, Trade and Development:

Forced Marriage: <http://travel.gc.ca/assistance/emergency-info/forced-marriage>

Formatted: English (Canada)

Photos of Minister Alexander available at:

<http://www.cic.gc.ca/english/department/media/photos/index.asp>

– 30 –

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613-957-4207

DRAFT



BACKGROUND

Draft

(BG 54) - A comparative before and after view of changes being proposed in the *Zero Tolerance for Barbaric Cultural Practices Act*

BEFORE	AFTER
Polygamy – Current Admissibility Provisions under IRPA	Polygamy – proposed amendments to admissibility provisions under IRPA
<p>Permanent Resident</p> <p>In the permanent residency stream, a foreign national, when entering Canada and becoming a permanent resident is permitted to have only one spouse. This requires an individual in a polygamous relationship to convert their marriage to a monogamous relationship.</p> <p>Some permanent resident applicants may try to circumvent the system by taking on an additional spouse at a later date, after they arrive in Canada.</p> <p>In Canada, the permanent resident could only be found inadmissible for practising polygamy if they are convicted in Canada of the criminal offence described under s. 293 of the <i>Criminal Code</i> and receive a term of imprisonment of more than six months. A permanent resident may also be found inadmissible for misrepresentation under immigration law, if they lied about being involved in a polygamous relationship when they became a permanent resident.</p>	<p>In the permanent residency stream, a foreign national who practices polygamy would still be required to convert their polygamous marriage to a monogamous one <u>before will be barred from</u> becoming a permanent resident.</p> <p>However, once in Canada, a permanent resident who starts or resumes a polygamous relationship <u>could will be</u> found inadmissible under the new provision. Also, given IRPA would have a specific provision for polygamy, removal proceedings could be initiated without requiring a finding of either criminality or misrepresentation.</p>
<p>Temporary Resident</p> <p>A temporary resident who practices polygamy in their country of origin is generally allowed to enter with only one spouse at the time of seeking entry.</p>	<p>A foreign national seeking temporary residence <u>will be found inadmissible if they try to enter Canada with more than one spouse.</u> who practices polygamy in their country of origin would be allowed to</p>

	<p>enter Canada only if they are travelling alone. The physical presence in Canada of two individuals from a polygamous relationship will be considered as "practicing polygamy in Canada".</p>
Civil Marriage Act	
<p>Legal Requirements to Marry The legal requirement for free and enlightened consent to marriage is currently contained in federal legislation that applies in the Province of Quebec only, and in the common law (court decisions) for residents of other provinces and territories.</p> <p>The minimum age of 16 for marriage, below which no marriage can be contracted, is currently contained in federal legislation that applies in the Province of Quebec only. For the other provinces and territories, the minimum age is not currently provided for in federal legislation and there is some debate about the minimum age in the common law between age twelve for girls and fourteen for boys, and age seven.</p> <p>The legal clarification that any previous marriage must be dissolved prior to a new marriage is currently contained in federal legislation that applies in the Province of Quebec only. (The requirement for monogamy already exists nationally in section 4 of the <i>Civil Marriage Act</i> and is reflected in sections 290, 291 & 293 of the <i>Criminal Code</i>.)</p>	<p>The legal requirement for free and enlightened consent to marriage would now apply nationally to all Canadian residents.</p> <p>A new national minimum age of 16 for marriage, below which no marriage can be contracted, would now apply to all Canadian residents. Legislation in the provinces and territories may set out additional requirements, such as parental consent and consent of the court, for marriages between the national minimum age and the age of majority.</p> <p>The legal clarification that any previous marriage must be dissolved prior to a new marriage would now apply nationally to all Canadian residents.</p>
Criminal Code	
<p>Early and Forced Marriage Family members can employ a range of techniques to force a marriage onto an unwilling person, both in the time leading up to the marriage and possibly also in connection with the marriage ceremony itself. Family members may also engage in similar conduct to cause an underage child to marry. Wherever the conduct involved amounts to an existing criminal offence – such as uttering threats, assault, or forcible confinement – it is subject to prosecution.</p>	<p>Family members and others would be subject to prosecution where they actively and knowingly participate in a forced or early marriage ceremony, such as by transporting an unwilling or underage daughter to the ceremony or acting as a legal witness. A person who knowingly performs a forced or early marriage ceremony would also be subject to prosecution.</p>

Removal of Child from Canada

In a situation of a forced or early marriage, family members could be prosecuted for taking steps to remove a young person from Canada if the Crown could prove that they did so with the knowledge that, following a forced or early marriage ceremony abroad, the child would be subjected to a sexual offence.

Peace Bond

Where there are reasonable grounds to fear that a person – including family members – will cause personal injury to another person, they can be brought to court and ordered to enter into a recognizance peace bond (or court order) to keep the peace and be of good behaviour. Other conditions can be imposed, including that the person have no contact with the person who fears for their safety. A person subject to a peace bond could be prosecuted if they breach the order.

Provocation Defence

A person who is found to have committed murder can raise the defence of provocation where they killed the victim in the "heat of passion" brought on by a "wrongful act or insult" from the victim that would be sufficient to cause an ordinary person to lose self-control. Individuals who are prosecuted for murder in so-called "honour" killings can raise the defence, if they allege that the victim's conduct was so insulting and offensive to them and/or to their family's reputation that it caused them to kill in a state of rage.

Where successful, provocation is a defence for murder that results in a conviction for manslaughter. Manslaughter carries a maximum punishment of life in prison, and no minimum punishment except if a firearm was used (4 years).

Family members and others would be subject to prosecution where they take steps to **remove a young person from Canada specifically with the intent that they be subjected to a forced or early marriage abroad**. The Crown would not have to prove that the family knew there would be a sexual offence following the marriage.

Where there are reasonable grounds to believe that a person will specifically aid or participate in a forced or early marriage ceremony involving someone else (for example, their child), or will take a young person out of Canada for the purposes of a forced or early marriage ceremony abroad, they could be brought to court and ordered to enter into a recognizance Peace Bond to keep the peace and be of good behaviour. A court would be empowered to make orders that could be particularly useful in specifically preventing an early or forced marriage, whether in Canada or abroad, such as ordering the person to surrender travel documents, to refrain from making arrangements or agreements in relation to the marriage, or to participate in a family violence counselling program.

The **provocation** defence would only be available to an accused found guilty of murder where the conduct of the victim that provoked the accused to kill amounted to a criminal offence punishable by 5 years or more in prison could qualify.

A victim's personal choices about lifestyle or dating or marriage partners, including where such choices were conveyed in a manner perceived as insulting, could not qualify as provocation for the purposes of providing a defence to murder.

Consequential Amendments	
<p>Criminal Code Paragraph 150.1(2.1)(b) of the <i>Criminal Code</i> provides an exception from criminal liability for what would otherwise be the listed sexual offences involving a child between the ages of 14 and 16 years if the complainant and the accused are married.</p> <p>Prisons and Reformatories Act Section 2 of the <i>Prisons and Reformatories Act</i> provides a definition of "prisoner", which in turn permits such persons to be lawfully held in a provincial jail.</p> <p>Youth Criminal Justice Act Subsection 14(2) of the <i>Youth Criminal Justice Act</i> gives jurisdiction to a youth justice court to make orders against young persons under the peace bond provisions of the Code.</p> <p>Subsection 142(1) of the <i>Youth Criminal Justice Act</i> provides that the provisions of Part XXVII of the <i>Criminal Code</i> apply to proceedings in respect of peace bonds against young persons.</p>	<p>The Bill proposes to repeal paragraph 150.1(2.1)(b) of the <i>Criminal Code</i>, to match the proposed amendments to the <i>Civil Marriage Act</i>, which will prohibit marriages below the age of 16.</p> <p>A person who breaches conditions imposed as part of a peace bond, including the new peace bond where there is a fear that they may commit a forced or early marriage offence, could be lawfully held in a provincial jail.</p> <p>A youth justice court would also have jurisdiction to impose a new peace bond where there is a fear that a young person may commit a forced or early marriage offence.</p> <p>The new peace bond to prevent forced or early marriage, when ordered against a young person, would be governed by the provisions of Part XXVII of the <i>Criminal Code</i>, as is the case for other peace bonds.</p>



BACKGROUND

Draft

(BG 1) – An Overview of the Zero Tolerance for Barbaric Cultural Practices Act: An Overview

In Canada, men and women are equal under the law. The Zero Tolerance for Barbaric Cultural Practices Act demonstrates that Canada's openness and generosity does not extend to early and forced marriage, polygamy or other types of barbaric cultural practices. Canada will not tolerate any type of violence against women or girls, including spousal abuse, violence in the name of so-called "honour", or other, mostly gender-based violence. Those found guilty of these crimes are severely punished under Canada's criminal laws.

To deliver on the Government of Canada's commitment to standing up for victims of violence and abuse and to send a strong message to those in Canada – and those wishing to come to Canada – that barbaric cultural practices will not be tolerated on Canadian soil, the Government is proposing changes to the to amend five federal statutes:

Immigration and Refugee Protection Act

Address polygamy in Canada through the creation of a new polygamy-specific inadmissibility provision in the *Immigration and Refugee Protection Act*, which would:

- Prohibit temporary residents and permanent residents from practising polygamy in Canada; and
- Provide for the removal of non-citizens who practise polygamy in Canada without the need for a Criminal Code conviction.

Civil Marriage Act

Make amendments to the *Civil Marriage Act* to:

Legislate across Canada two existing legal requirements for a valid marriage – the requirement for free and enlightened consent (proposed section 2.1), and the requirement for ending an existing marriage prior to entering another (proposed section 2.3). These legal requirements currently exist in federal legislation that applies in the Province of Quebec only (sections 5 and 7 of the *Federal Law–Civil Law Harmonization Act, No. 1*), and in the common law (court decisions) for residents of other provinces and territories.

The bill would also establish a new national minimum age for marriage of 16, below which no marriage could be contracted (proposed section 2.2). This legal requirement currently exists only in federal legislation that applies in the Province of Quebec (section 6 of the *Federal Law-Civil Law Harmonization Act, No. 1*). The common law (court decisions) applying to residents of other provinces and territories is sometimes interpreted as setting a minimum age of 14 for boys and 12 for girls, and historically sometimes as low as age 7. This proposed amendment would provide equal protection to all Canadian children by setting the minimum age at to age 16 across Canada.

Additional legal protections for children between the new minimum age for marriage and the age of majority, set by the province or territory of residence at 18 or 19 years of age, are found in provincial and territorial marriage laws. These laws currently require parental consent (and in some instances also the consent of a judge) to ensure that the child fully understands the legal consequences of marriage, in those exceptional circumstances where a child would be mature enough to marry. The Minister of Justice Canada has asked his provincial and territorial counterparts to consider making complementary amendments to their marriage laws to ensure that children are uniformly protected by requiring a judge to make the proper inquiries, in addition to parental consent, in the case of any marriage involving a child between the age of 16 and the age of majority.

Criminal Code

Amend the *Criminal Code* to provide additional protections building on the proposed amendments to the *Civil Marriage Act* to prevent forced or underage marriages. The proposed amendments would:

- amend the existing offence for a legally-authorized officiant who knowingly solemnizes a marriage contrary to provincial law (section 295) to clarify that this also includes a marriage that is contrary to federal law, including a forced marriage or a marriage under the age of 16 – this offence is punishable by up to two years in prison;
- create a new offence prohibiting the active and knowing participation in a forced marriage ceremony by any person, including parents or other family members of the person being forced to marry, or the performance of a forced marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.1) - this offence would be punishable by a maximum of five years imprisonment;
- create a new offence prohibiting the active and knowing participation in a marriage ceremony involving a person under the age of 16, by any person, including parents or other family members of the person who is underage, or the performance of an underage marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.2) - this offence would be punishable by a maximum of five years imprisonment;
- extend the existing offence of removing a child from Canada for the purpose of having certain offences committed abroad to include the removal of a child for the purpose of a forced marriage or a marriage under the age of 16 outside of Canada (proposed paragraph 273.3(1)(d)) – this offence is punishable by a maximum of five years' imprisonment; and
- introduce a new peace bond that gives the court power to impose conditions on a person where there are reasonable grounds to fear that a forced marriage or a marriage under the age of 16 will otherwise occur (proposed section 810.02).

The bill would also amend the *Criminal Code* to address concerns that the defence of provocation (section 232) has been raised in several so-called "honour" killing cases in Canada. In these cases, in which accused persons who killed either their wives wife, or their sister (along with their, or sister's fiancé,) alleged that the killing was motivated by their perception that the victims had brought dishonour to them or their family through their conduct or choices, taking into account their culture's views about appropriate gender roles and behaviour.

The defence of provocation currently allows a person found to have committed murder (which carries a mandatory sentence of life in prison and minimum parole ineligibility periods) to seek a conviction of manslaughter instead (with no minimum sentence unless a firearm is used) by arguing that the victim's conduct provoked them to lose self-control and kill.

Currently, any conduct by the victim – including insults and other forms of offensive behaviour that are lawful – can potentially qualify as provocation if it is found to be sufficient to cause an ordinary person to lose self-control, the accused was not expecting it and the killing was sudden. The proposed amendment would limit the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family "honour" or reputation, cannot be used to reduce murder to manslaughter; only conduct by the victim that amounts to a relatively serious criminal offence (i.e. an offence under the *Criminal Code* punishable by at least 5 years in prison) could be argued to be "provocation" for the purposes of the defence.

Consequential amendments

Consequential amendments resulting from the above-mentioned changes will also be made to the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act*, primarily to include references to the new peace bond.



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

BACKGROUND

Draft

(BG 2) Zero Tolerance for Barbaric Cultural Practices Act – Addressing Polygamy and changes to the Immigration and Refugee Protection Act

A polygamous marriage is defined as one in which an individual has more than one spouse at the same time. It is an offence, under section 293 of the *Criminal Code*, to practise polygamy or enter into a polygamous union in Canada. The constitutionality of the provision was upheld by the Supreme Court of British Columbia in 2014.

There is an increasing global consensus that polygamy is fundamentally harmful to women, children and to the wider society, because it creates great potential for the exploitation and abuse of female spouses and underage girls. Human rights and women's rights organizations have consistently called for the abolition of polygamy. In spite of this, some countries allow such practices and others, like Canada, face challenges in eliminating it.

The *Zero Tolerance for Barbaric Cultural Practices Act* proposes the creation of a new inadmissibility for polygamy in the *Immigration and Refugee Protection Act* (IRPA).

This provision would increase the Government of Canada's ability to prevent polygamy from occurring in Canada. While current IRPA provisions require foreign nationals wishing to become permanent residents to have only one spouse, once in Canada it is difficult to find these individuals inadmissible. A criminal conviction or finding of misrepresentation is currently required before a person practising polygamy can be found inadmissible.

The changes would mean that a polygamist permanent resident or foreign national who is or will be physically present in Canada with even one of their polygamous spouses would be considered to be practising polygamy in Canada. The permanent resident or foreign national could be found inadmissible *on that basis alone*, without requiring evidence that the person misrepresented their situation or has a criminal conviction.

The new inadmissibility would apply in both the temporary and permanent immigration streams. While in the permanent stream, permanent residents will be required to stop practicing polygamy and will only be permitted to immigrate with one monogamous spouse. In the temporary stream, visitors, students and workers who practise polygamy abroad would be admissible to Canada only as long as they travel without any of their spouses. Those who were to and come to Canada with even one spouse, or join a polygamous spouse in Canada, would be considered to be practising polygamy on Canadian soil and would be inadmissible under IRPA.

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Citizenship and
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Immigration Canada

BACKGROUND

Draft

(BG 43) - Key Federal Initiatives Protecting and Supporting Vulnerable Women and Girls

The bill would complement existing Canadian initiatives, both at home and abroad, to put an end to barbaric cultural practices that go against Canadian values because they cause harm to women and girls and prevent their full participation in society. These practices, which include early and forced marriage, "honour"-based violence and female genital mutilation/cutting, have no place in Canada's free and democratic society. Some of Canada's initiatives to end these practices are set out below.

Canada on the International Stage

Canada has made ending child, early and forced marriage (CEFM) a foreign policy and development priority and is intensifying programming and advocacy efforts to address child, early and forced marriage. For example:

- Canada spearheaded the initiative to establish the International Day of the Girl Child, which focused on child, early and forced marriage in 2012, its first year.
- In October 2013, Canada announced \$5 million in new money to address the causes and consequences of CEFM around the world. These funds were used for programs in Afghanistan, Ethiopia, Ghana, Somalia, and Zimbabwe.
- On July 4, 2014, Minister Baird announced that Canada is contributing \$20 million over two years to UNICEF toward ending child, early and forced marriage. The UNICEF project aims to accelerate the movement to end child marriage in Bangladesh, Burkina Faso, Ethiopia, Ghana, Yemen and Zambia by supporting efforts in these countries to strengthen programming and political support to end the practice.
- Also in July 2014, Canada committed institutional support to the efforts of the Royal Commonwealth Society to raise awareness in Commonwealth countries about the need to end CEFM.
- Canada has played an important role in bringing world attention and action to this issue of child, early and forced marriage. For example, for the second year, Canada and Zambia will lead a United General Assembly resolution on child, early and forced marriage in the fall of 2014.
- Canada contributes to efforts to combat female genital mutilation/cutting (FGM) by working with UN agencies, and bilaterally with other countries supporting projects to address violence against women and eliminate harmful cultural practices like FGM

Canada at home

Canada has taken action to protect vulnerable Canadians, particularly women and girls, from early and forced marriage and other harmful cultural practices. For example:

Citizenship and Immigration Canada (CIC)

- Many **CIC-funded organizations** provide targeted programming designed for specific groups, including women. Newcomer women may benefit from blended or women-only workshops, offering an inclusive and open environment to learn and discuss job search strategies and basic information needed to obtain meaningful employment.
- In addition, **women-only language classes** are available for immigrant and refugee women. CIC funded language classes cover issues such as family violence, spousal abuse, women's rights, legal rights and responsibilities, and health care, and include bridging or referral to other available services in the community.
- Both Canada's citizenship study guide "**Discover Canada**" and the "**Welcome to Canada**" orientation guide were recently updated to reflect the fact that Canada's openness and generosity do not extend to harmful cultural practices such as forced marriage or other forms of gender-based family violence.
- CIC also disseminates the brochure "**Information for Sponsored Spouses or Partners**" to sponsored spouses and partners who are subject to the conditional permanent residence measure. The brochure provides information for those who are subject to the condition and who are victims of abuse or neglect, advising them that they do not have to remain in an abusive situation and informing them how to contact CIC and others and where they can find help.

Department of Justice Canada

- Justice Canada and Status of Women Canada co-chair an **interdepartmental working group** on early and forced marriage, "honour"-based violence and female genital mutilation/cutting. The working group has participation from 15 federal departments and agencies and acts as a focal point for collaborative actions.
- Since 2009, Justice Canada has held six **sector-specific workshops** on forced marriage and honour-based violence with police, Crowns, victim services, child protection officials and shelter workers, to assist in front-line capacity-building.
- Justice Canada also funded research papers on forced marriage and "honour" killings; included specific information on these forms of family violence in two public **legal education pamphlets** (one of which – *Abuse is Wrong in Any Language* – is available in 12 languages); and funded a variety of projects to prevent and respond to forced marriage and "honour"-based violence.
- Justice Canada operates an **emergency fund for Canadians who are victimized abroad** either through homicide, sexual assault, aggravated assault or assault with serious

personal violence, including against a child.

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Department of Foreign Affairs, Trade and Development (DFATD)

- **Consular Services** are available **24 hours a day** to Canadian victims of forced marriage abroad. DFATD provides **information about consular assistance** available to travellers at risk of forced marriage on its travel.gc.ca website.
- Increased awareness building and concrete programming efforts to combat child, early and forced marriage from a human rights and international development perspective will also support its reduction domestically.

Status of Women Canada

- Status of Women Canada (SWC) launched a call for proposals in 2012 which focused on preventing and eliminating violence against women and girls, including the specific area of violence committed in the name of "honour". It has also provided funding to NGOs to carry out projects addressing forced marriage. Since 2007, a total of over \$2.8M has been approved through SWC for community-based projects that address harmful cultural practices such as "honour" based violence and forced marriage.

The Royal Canadian Mounted Police (RCMP)

- The RCMP has developed **on-line training on forced marriage and "honour"-based violence** for RCMP officers and plans to make it available to municipal police and other agencies through the Canadian Police Knowledge Network in 2014.

Health Canada/Public Health Agency of Canada (HC/PHAC)

- PHAC will develop guidance on harmful cultural practices for health care and social service professionals, and educational and awareness materials for community-based frontline workers, victims and their children.

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Department of Justice
Canada

Ministère de la Justice
Canada

Fiche d'approbation Approval Slip

MLU 2014-015264

Objet / Subject: Final versions of clause-by-clause and Qs & As for ZTBCPA

Préparée par /
Prepared by: Gillian Blackell and CIC
Personnel de soutien /
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Cote de sécurité /
Security level: Secret
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Telephone number: 613-954-1470

Nombre de pièces jointes /
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Date limite à l'ULM /
Due at MLU: _____

Soumise pour approbation à
Sector approvals as required

Initiales Initials	Année Year	Mois Month	Journée Day
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Elissa Lieff, Senior General Counsel, FCY

<i>MLU for E. Lieff</i>	<i>2014</i>	<i>11</i>	<i>03</i>
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Donald K. Piragoff, Senior Assistant Deputy Minister, Policy Sector

<i>[Signature]</i>	<i>14</i>	<i>11</i>	<i>03</i>
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William F. Pentney, Deputy Minister

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Équipe du SM / DM-Team

Approbation/signature/examen du ministre demandé pour le :
Minister's signature/approval/review requested by: _____

Remarques / remarks:

À remplir par l'ULM / To be completed by MLU

À la demande de /Requested by:/ Veuillez faire
parvenir à :/Please forward to:

Revue interne / Seen by: _____
Rédaction par/ Edited by: _____

Reçue / received: _____

Received in MLU: _____

2014-10-27

CLAUSE BY CLAUSE OF BILL

An Act to Amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts.

Clause	Existing Legislation	Proposed Legislation	Explanation
1	Short title of the Bill: Zero Tolerance for Barbaric Cultural Practices Act		
2	<p><i>Immigration and Refugee Protection Act</i> (S.C. 2001, c. 27)</p> <p>N/A</p>	<p>2. The <i>Immigration and Refugee Protection Act</i> is amended by adding the following after section 41:</p> <p>41.1 (1) A permanent resident or a foreign national is inadmissible on grounds of practising polygamy if they are or will be practising polygamy with a person who is or will be physically present in Canada at the same time as the permanent resident or foreign national.</p> <p>(2) For the purposes of subsection (1), polygamy shall be interpreted in a manner consistent with paragraph 293(1)(a) of the <i>Criminal Code</i>.</p>	<p>This clause amends the <i>Immigration and Refugee Protection Act</i> (IRPA) to introduce a new provision (section 41.1) that will create a new ground of inadmissibility for both foreign nationals and permanent residents who practise polygamy in Canada. Under the proposed changes, a permanent resident or foreign national who is either in Canada or applying to come to Canada with any of their spouses would be considered to be practising polygamy. Individuals who come with even one of their spouses could be found inadmissible.</p> <p>Similar to other inadmissibilities that apply to foreign nationals and permanent residents, visa applications could be refused on this ground. Inland, a foreign national or permanent resident could be reported and directed to an inadmissibility hearing and issued a removal order if they are found to be practising polygamy in Canada. These amendments will not restrict otherwise available appeal rights to the Immigration Appeal Division and judicial review would remain available to both temporary residents and permanent residents.</p>
3	<i>Civil Marriage Act</i> (S.C. 2005, c. 33)	3. The <i>Civil Marriage Act</i> is	This clause amends the <i>Civil Marriage Act</i> to codify

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Clause	Existing Legislation	Proposed Legislation	Explanation
	N/A	<p>amended by adding the following after section 2:</p> <p>2.1 Marriage requires the free and enlightened consent of two persons to be the spouse of each other.</p> <p>2.2 No person who is under the age of 16 years may contract marriage.</p> <p>2.3 No person may contract a new marriage until every previous marriage has been dissolved by death or by divorce or declared to be null.</p>	<p>nationally the existing legal requirement for free and enlightened consent to marriage (new section 2.1). This requirement is currently contained in the <i>Federal Law—Civil Law Harmonization Act, No. 1</i> at section 5, with regard to the Province of Quebec only, and in the common law (court decisions) for residents of other provinces and territories.</p> <p>The new section 2.2 introduces a new national minimum age of 16 for marriage, below which no marriage can be contracted. This minimum age is currently contained in the <i>Federal Law—Civil Law Harmonization Act, No. 1</i> at section 6, but with regard to the Province of Quebec only. With regard to the other provinces and territories, the minimum age is not currently provided for in federal legislation and there is some debate about the minimum age in the common law between age twelve for girls and fourteen for boys, and age seven.</p> <p>The new section 2.3 codifies nationally the existing legal requirement for dissolution of any previous marriage, which is currently contained in federal legislation (section 7 of the <i>Federal Law—Civil Law Harmonization Act, No. 1</i> and section 4 of the <i>Civil Marriage Act</i>) and reflected in sections 290, 291 & 293 of the <i>Criminal Code</i>.</p>
4	<p><i>Civil Marriage Act</i> (S.C. 2005, c. 33)</p> <p>5(3) Any court order, made in Canada or elsewhere before the coming into force of this subsection, that declares the marriage to be null and void or that grants a divorce to the spouses</p>	<p>4. Subsection 5(3) of the English version of the Act is replaced by the following:</p> <p>5(3) Any court order, made in Canada or elsewhere before the coming into force of this subsection, that declares the</p>	<p>This clause makes an amendment to the existing English version of subsection 5(3) to replace the term “null and void” with “null” for consistency with the new section 2.3 and to reflect bijural concerns. No change is needed to the existing French version.</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
	dissolves the marriage, for the purposes of Canadian law, as of the day on which the order takes effect.	marriage to be null or that grants a divorce to the spouses dissolves the marriage, for the purposes of Canadian law, as of the day on which the order takes effect.	
5	<p><i>Criminal Code</i> (R.S.C., 1985, c. C-46)</p> <p>150.1 (2.1) When an accused is charged with an offence under section 151 or 152, subsection 173(2) or section 271 in respect of a complainant who is 14 years of age or more but under the age of 16 years, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if</p> <p>(a) the accused</p> <p>(i) is less than five years older than the complainant; and</p> <p>(ii) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant; or</p>	<p>5. Subsection 150.1(2.1) of the Criminal Code is replaced by the following:</p> <p><u>If</u> an accused is charged with an offence under section 151 or 152, subsection 173(2) or section 271 in respect of a complainant who is 14 years of age or more but under the age of 16 years, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused</p> <p>(a) is less than five years older than the complainant; and</p> <p>(b) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is</p>	<p>This clause repeals paragraph 150.1(2.1)(b) of the <i>Criminal Code</i>, which provides an exception for certain sexual offences involving a child between the ages of 14 and 16 years if the complainant and the accused are married. This exception was created precisely because, at the time the age of consent for sex was raised from 14 to 16 (in the <i>Tackling Violence Crime Act</i>, 2008), it was known that in some provinces, children between 14 and 16 could legally marry with the consent of their parents or the courts, and could therefore be able to consent to sex.</p> <p>This bill is setting an absolute minimum age of marriage at 16 years. As of the coming into force of the amendments to the <i>Civil Marriage Act</i> in this bill, marriages of persons between the ages of 14 and 16 in Canada will no longer be legal.</p> <p>However, there could be marriages of persons under the age of 16 that take place shortly before the amendments to the <i>Civil Marriage Act</i> in this bill come into force. For this reason, this clause also amends the <i>Criminal Code</i> to add a transitional provision to make an exception to the designated offences where, at the date of coming into force of the amendments to the <i>Civil Marriage Act</i> in this bill, the accused is married to the complainant who is still under the age of 16.</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
	(b) the accused is married to the complainant.	<p>exploitative of the complainant.</p> <p>Section 150.1 of the Act is amended by adding the following after subsection (2.2):</p> <p>(2.3) If, immediately before the day on which this subsection comes into force, the accused referred to in subsection (2.1) is married to the complainant, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge.</p>	
6	<p>Criminal Code (R.S.C., 1985, c. C-46)</p> <p>232(2) A wrongful act or insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section, if the accused acted on it on the sudden and before there was time for his passion to cool.</p> <p>232(3)</p> <p>(a) whether a particular wrongful act or insult amounted to provocation, and</p>	<p>6. (1) Subsection 232(2) of the Criminal Code is replaced by the following:</p> <p>(2) <u>Conduct of the victim that would constitute an indictable offence under this Act punishable by five or more years of imprisonment and</u> that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section, if the accused acted on it on the sudden and before there was time for his <u>or her</u> passion to cool.</p>	<p>This clause amends the <i>Criminal Code</i> to restrict the application of the partial defence of provocation by replacing the reference in subsection 232(2) to a “wrongful act or insult” of the victim with “the conduct of the victim that would constitute an indictable offence under this Act punishable by five years or more imprisonment.”</p> <p>This clause also replaces the reference in paragraph 232(3)(a) to the “wrongful act or insult” of the victim with “the conduct of the victim” and refers back to subsection 232(2).</p> <p>When successful, the defence of provocation produces an acquittal for murder, even though the person has been found to have committed murder beyond a reasonable doubt, and instead produces a conviction for</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
		<p>(2) Paragraph 232(3)(a) of the Act is replaced by the following:</p> <p>(a) whether <u>the conduct of the victim</u> amounted to provocation under subsection (2), and</p>	<p>manslaughter. Manslaughter carries a maximum punishment of life in prison, but no minimum punishment, except that where a firearm was used there is a 4 year minimum sentence.</p>
7	<p><i>Criminal Code</i> (R.S.C., 1985, c. C-46)</p> <p>N/A</p>	<p>7. Subsection 273.3(1) of the Act is amended by striking out "or" at the end of paragraph (b), by adding "or" at the end of paragraph (c) and by adding the following after paragraph (c):</p> <p>(d) under the age of 18 years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against section 293.1 in respect of that person or under the age of 16 years, with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against section 293.2 in respect of that person.</p>	<p>This clause amends the <i>Criminal Code</i> offence of removing a child from Canada with the intention that an act be committed outside Canada that would be a listed offence in Canada, to two new listed offences.</p> <p>The new paragraph 273.3(1)(d) makes it an offence to do anything for the purposes of removing from Canada a person under the age of 18 years who is ordinarily resident in Canada with the intention that the person be married against their will (which would be made an offence where it occurs in Canada under Clause 8).</p> <p>The new paragraph 273.3(1)(d) also makes it an offence to do anything for the purposes of removing from Canada a person under the age of 16 years who is ordinarily resident in Canada with the intention that the person be married while under the age of 16 (which would be made an offence where it occurs in Canada under Clause 8).</p> <p>The existing offence of taking steps to remove a child from Canada for the purpose of certain offences is punishable by imprisonment of a term not exceeding five years when proceeded with by indictment or by imprisonment not exceeding six months is proceeded</p>

2014-10-27

Clause	Existing Legislation	Proposed Legislation	Explanation
			with by summary conviction, as set out under the current subsection 273.3(2).
8	<p><i>Criminal Code</i> (R.S.C., 1985, c. C-46)</p> <p>N/A</p>	<p>8. The Act is amended by adding the following after section 293:</p> <p>293.1 Every one who celebrates, aids or participates in a marriage rite or ceremony knowing that one of the persons being married is marrying against their will is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.</p> <p>293.2 Every one who celebrates, aids or participates in a marriage rite or ceremony knowing that one of the persons being married is under the age of 16 years is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.</p>	<p>This clause amends the <i>Criminal Code</i> to introduce two new offences of celebrating, aiding or participating in a forced marriage ceremony and celebrating, aiding or participating in a marriage ceremony of a person under the age of 16.</p> <p>These new offences (sections 293.1 and 293.2) parallel the existing offence related to participating in a polygamous marriage ceremony at paragraph 293(1)(b) of the <i>Criminal Code</i> and would have the same maximum penalty of five years' imprisonment. These new offences denounce behavior that actively provides social legitimacy to a harmful practice that creates an unwanted and/or harmful legal bond (within which sexual assault and other offences are expected to take place).</p> <p>The offence would not capture attendees at the ceremony unless they engage in some action intended to help the marriage take place, as the courts have made it clear that criminal liability cannot be based on passive presence at the scene of a crime.</p>
9	<p><i>Criminal Code</i> (R.S.C., 1985, c. C-46)</p> <p>295. Every one who, being lawfully authorized to solemnize marriage, knowingly solemnizes a marriage in contravention of the laws of the</p>	<p>9. Section 295 of the Act is replaced by the following:</p> <p>295. Every one who, being lawfully authorized to solemnize marriage, knowingly solemnizes a marriage in contravention of</p>	<p>This clause amends the <i>Criminal Code</i> offence of solemnizing a marriage contrary to law (section 295) to clarify that it also includes solemnizing a marriage in contravention of federal law.</p> <p>The current offence applies to lawfully authorized officiants who conduct marriages contrary to the laws of</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
	<p>province in which the marriage is solemnized is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.</p>	<p>federal law or the laws of the province in which the marriage is solemnized is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.</p>	<p>the province in which the marriage is solemnized. As the federal and provincial governments share constitutional power over marriage, provincial laws concerning "the solemnization of marriage" require compliance with federal law for legal validity of the marriage. However, this may not be clear from the legislative text. The proposed amendment would clarify that the offence prohibits a lawfully authorized officiant from performing a marriage contrary to federal law, including but not limited to, forced or underage marriage.</p>
<p>10</p>	<p><i>Criminal Code</i> (R.S.C., 1985, c. C-46)</p> <p>N/A</p>	<p>10. The Act is amended by adding the following after section 810.01:</p> <p>810.02 (1) A person who fears on reasonable grounds that another person will commit an offence under paragraph 273.3(1)(d) or section 293.1 or 293.2 may lay an information before a provincial court judge.</p> <p>(2) The judge who receives an information under subsection (1) may cause the parties to appear before a provincial court judge.</p> <p>(3) If the provincial court judge before whom the parties appear is satisfied by the evidence adduced that the informant has reasonable grounds for the fear, the judge may order that the</p>	<p>This clause amends the <i>Criminal Code</i> to introduce a new recognizance order (or peace bond) at section 810.02 that can be issued by a provincial court judge if they are satisfied that an individual has a reasonable fear that another person will commit an offence under new paragraph 273.3(1)(d) (removal of a child from Canada for a marriage against their will or a marriage of a child under the age of 16) or new section 293.1 (participating in a forced marriage ceremony) or new section 293.2 (participating in a marriage ceremony of a person under the age of 16).</p> <p>Consistent with all other peace bond provisions in the <i>Code</i>, subsections (2) to (9) provide for procedural mechanisms, punishment mechanisms and conditions that may be imposed in association with the recognizance.</p> <p>Most of the conditions provided for in subsection 810.02(6) are common to all peace bond provisions. Paragraphs 810.02(6)(a) to (c) and (e) are particularly relevant to forced or early marriage. They permit a court to order:</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
		<p>defendant enter into a recognizance to keep the peace and be of good behaviour for a period of not more than 12 months.</p> <p>(4) However, if the provincial court judge is also satisfied that the defendant was convicted previously of an offence referred to in subsection (1), the judge may order that the defendant enter into the recognizance for a period of not more than two years.</p> <p>(5) The provincial court judge may commit the defendant to prison for a term not exceeding 12 months if the defendant fails or refuses to enter into the recognizance.</p> <p>(6) The provincial court judge may add any reasonable conditions to the recognizance that the judge considers desirable to secure the good conduct of the defendant, including conditions that</p> <p>(a) prohibit the defendant from making agreements or arrangements for the marriage, whether in or</p>	<ul style="list-style-type: none"> that the defendant be prohibited from making any agreements or arrangements in relation to the feared marriage (paragraph 810.02(6)(a)). This condition could encompass non-criminal behavior, such as making written or oral agreements to forcibly marry one's child or booking a venue for a forced or underage marriage ceremony; that the defendant be prohibited from taking steps to cause the person in respect of whom it is feared that the offence will be committed to leave the jurisdiction of the court, such as making travel arrangements for that person with the intent that a forced or underage marriage take place in another jurisdiction (paragraph 810.02(6)(b)); that the defendant deposit any passport or other travel document in their possession, relating to any specified person, in any manner specified by the court (e.g. Canadian passports could be ordered to be remitted to the passport Integrity Branch of Citizenship and Immigration Canada)(paragraph 810.02(6)(c)); and that the defendant participate in a treatment program, including a family violence counselling program, particularly programs that contain components related to gender equality (paragraph 810.02(6)(e)).

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<u>Clause</u>	<u>Existing Legislation</u>	<u>Proposed Legislation</u>	<u>Explanation</u>
		<p>outside Canada, of the person in respect of whom it is feared that the offence will be committed;</p> <p>(b) prohibit the defendant from taking steps to cause the person in respect of whom it is feared that the offence will be committed to leave the jurisdiction of the court;</p> <p>(c) require the defendant to deposit, in the specified manner, any passport or any other travel document that is in his or her possession or control, whether or not such passport or document is in his or her name or in the name of any other specified person;</p> <p>(d) prohibit the defendant from communicating, directly or indirectly, with any specified person, or refrain from going to any specified place, except in accordance with any specified conditions that the judge considers necessary;</p> <p>(e) require the defendant to participate in a treatment program, including a family</p>	

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<u>Clause</u>	<u>Existing Legislation</u>	<u>Proposed Legislation</u>	<u>Explanation</u>
		<p>violence counselling program;</p> <p>(f) require the defendant to remain within a specified geographic area unless written permission to leave that area is obtained from the provincial court judge; and</p> <p>(g) require the defendant to return to and remain at his or her place of residence at specified times.</p> <p>(7) The provincial court judge shall consider whether it is desirable, in the interests of the defendant's safety or that of any other person, to prohibit the defendant from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all of those things. If the judge decides that it is desirable to do so, the judge shall add that condition to the recognizance and specify the period during which the condition applies.</p> <p>(8) If the provincial court judge adds a condition described in subsection (7) to a recognizance,</p>	

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<u>Clause</u>	<u>Existing Legislation</u>	<u>Proposed Legislation</u>	<u>Explanation</u>
		<p>the judge shall specify in the recognizance how the things referred to in that subsection that are in the defendant's possession are to be surrendered, disposed of, detained, stored or dealt with and how the authorizations, licences and registration certificates that are held by the defendant are to be surrendered.</p> <p>(9) A provincial court judge may, on application of the informant or the defendant, vary the conditions fixed in the recognizance.</p>	
11	<p><i>Criminal Code</i> (R.S.C., 1985, c. C-46)</p> <p>811. A person bound by a recognizance under section 83.3, 810, 810.01, 810.1 or 810.2 who commits a breach of the recognizance is guilty of</p>	<p>11. The portion of section 811 of the Act before paragraph (a) is replaced by the following:</p> <p>811. A person bound by a recognizance under section 83.3, 810, 810.01, <u>810.02</u>, 810.1 or 810.2 who commits a breach of the recognizance is guilty of</p>	<p>This clause amends the <i>Criminal Code</i> offence of a breach of recognizance (peace bond) by adding a reference to the new recognizance order for forced or underage marriage.</p>
12	<p><i>Prisons and Reformatories Act</i> (R.S.C., 1985, c. P-20)</p> <p>who is confined in a prison pursuant to a sentence for an offence under an Act</p>	<p>12. The portion of the definition "prisoner" in subsection 2(1) of the <i>Prisons and Reformatories Act</i> after paragraph (b) is replaced by</p>	<p>Clause 12 of the Bill creates a new peace bond, section 810.02, which allows a judge to require any individual to abide by strict conditions to ensure that they will not commit one of the new forced or underage marriage offences. If the offender violates these conditions, the</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
	of Parliament or any regulations made thereunder, or pursuant to a committal for failure or refusal to enter into a recognizance under section 810, 810.1 or 810.2 of the <i>Criminal Code</i> ;	<p>the following:</p> <p>who is confined in a prison pursuant to a sentence for an offence under <u>a provision of an Act of Parliament or any of its regulations</u>, or pursuant to a committal for failure or refusal to enter into a recognizance under section 810, 810.02, <u>810.1 or 810.2</u> of the <i>Criminal Code</i>;</p>	court may commit the defendant to imprisonment for a term of up to 12 months. In order for the offender to be lawfully held in a provincial jail, section 810.02 must be included in the list under the definition of the term “prisoner” in section 2 of the <i>Prisons and Reformatories Act</i> (PRA), similar to existing peace bond provisions.
13	<p><i>Youth Criminal Justice Act</i> (S.C. 2002, c. 1)</p> <p>(2) A youth justice court has jurisdiction to make orders against a young person under sections 810 (recognizance — fear of injury or damage), 810.01 (recognizance — fear of criminal organization offence), and 810.2 (recognizance — fear of serious personal injury offence) of the <i>Criminal Code</i>. If the young person fails or refuses to enter into a recognizance referred to in any of those sections, the court may impose any one of the sanctions set out in subsection 42(2) (youth sentence) except that, in the case of an order under paragraph 42(2)(n) (custody and supervision order), it shall not exceed thirty days.</p>	<p>13. Subsection 14(2) of the <i>Youth Criminal Justice Act</i> is replaced by the following:</p> <p>(2) A youth justice court has jurisdiction to make orders against a young person under sections 810 (recognizance — fear of injury or damage), 810.01 (recognizance — fear of criminal organization offence), <u>810.02 (recognizance — fear of forced marriage or marriage under the age of 16)</u> and 810.2 (recognizance — fear of serious personal injury offence) of the <i>Criminal Code</i>. If the young person fails or refuses to enter into a recognizance referred to in any of those sections, the court may impose any one of the sanctions set out in subsection</p>	<p>Clause 13 would amend subsection 14(2) of the <i>Youth Criminal Justice Act</i> (YCJA) to include a reference to the new peace bond (recognizance) to prevent forced or under age marriage, which provides jurisdiction to a youth justice court to make orders under the <i>Criminal Code</i> recognizance provisions, except where the recognizance could have an adverse impact on youth.</p> <p>Studies on forced marriage indicate that multiple family members can take part in the use of force for the purpose of compelling a person to marry against their will (e.g. assault, uttering threats, forcible confinement). Older siblings may be tasked by their parents with the job of enforcing or assisting with the enforcement of the marriage. As a result, it is highly possible that these preventive peace bonds could effectively be taken out not only against the parents but also siblings or cousins who have used force against the victim of a proposed forced marriage. Some of these individuals may be between the ages of 12 and 18 and therefore under the jurisdiction of the YCJA.</p>

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Clause	Existing Legislation	Proposed Legislation	Explanation
		42(2) (youth sentence) except that, in the case of an order under paragraph 42(2)(n) (custody and supervision order), it shall not exceed thirty days.	
14	<p><i>Youth Criminal Justice Act</i> (S.C. 2002, c. 1)</p> <p>(a) in respect of an order under section 810 (recognizance — fear of injury or damage), 810.01 (recognizance — fear of criminal organization offence), or 810.2 (recognizance — fear of serious personal injury offence) of that Act or an offence under section 811 (breach of recognizance) of that Act;</p>	<p>14. Paragraph 142(1)(a) of the Act is replaced by the following:</p> <p>(a) in respect of an order under section 810 (recognizance — fear of injury or damage), 810.01 (recognizance — fear of criminal organization offence), <u>810.02 (recognizance — fear of forced marriage or marriage under the age of 16)</u> or 810.2 (recognizance — fear of serious personal injury offence) of that Act or an offence under section 811 (breach of recognizance) of that Act;</p>	<p>This clause amends paragraph 142(1)(a) of the YCJA to include a reference to the new peace bond (recognizance) to prevent forced or under age marriage in the application of the recognizance provisions under Part XXVII of the <i>Criminal Code</i> to the proceedings under the YCJA.</p>
15	N/A	<p>15. (1) Part 1 comes into force on a day to be fixed by order of the Governor in Council.</p> <p>(2) Part 3 comes into force on a day to be fixed by order of the Governor in Council.</p>	

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ANALYSE ARTICLE PAR ARTICLE DU PROJET DE LOI

Loi modifiant la *Loi sur l'immigration et la protection des réfugiés*, la *Loi sur le mariage civil* et le *Code criminel* et d'autres lois en conséquence.

<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
1	Titre abrégé du projet de loi : <i>Loi sur la tolérance zéro face aux pratiques culturelles barbares</i>.		
2	<p><i>Loi sur l'immigration et la protection des réfugiés</i> (L.C. 2001, ch. 27)</p> <p>N/A</p>	<p>2. La <i>Loi sur l'immigration et la protection des réfugiés</i> est modifiée par adjonction, après l'article 41, de ce qui suit :</p> <p>41.1 (1) Emportent interdiction de territoire pour pratique de la polygamie la pratique actuelle ou future de celle-ci avec une personne effectivement présente ou qui sera effectivement présente au Canada au même moment que le résident permanent ou l'étranger.</p> <p>(2) Pour l'application du paragraphe (1), la polygamie s'interprète d'une manière compatible avec l'alinéa 293(1)a) du <i>Code criminel</i>.</p>	<p>Cet article modifie la <i>Loi sur l'immigration et la protection des réfugiés</i> (LIPR) afin de créer une nouvelle disposition (article 41.1) qui établira un nouveau motif d'interdiction de territoire pour les ressortissants étrangers et les résidents permanents qui pratiquent la polygamie au Canada. Dans le cadre de cette disposition, un résident permanent ou un ressortissant étranger qui se trouve au Canada ou qui applique pour venir au Canada avec un(e) de leur époux(ses) serait considéré comme pratiquant la polygamie. Les individus qui voyagent avec même un(e) seul(e) de leur époux(ses) pourraient être déclarés interdits de territoire.</p> <p>Comme c'est le cas avec d'autres interdictions de territoire qui s'appliquent aux ressortissants étrangers, des demandes de visa pourraient être refusées pour ce motif. Au Canada, un ressortissant étranger ou un résident permanent pourrait faire l'objet d'un rapport et d'une audience portant sur l'interdiction de territoire ainsi que d'une ordonnance de renvoi, s'il est jugé qu'il pratique la polygamie au Canada. Ces modifications ne limiteront pas les droits d'appel disponibles devant la Section d'appel de l'immigration, et les résidents temporaires et permanents pourraient encore présenter des demandes de contestation judiciaire.</p>

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<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
3	<p><i>Loi sur le mariage civil</i> (L.C. 2005, ch. 33)</p> <p>N/A</p>	<p>3. La <i>Loi sur le mariage civil</i> est modifiée par adjonction, après l'article 2 de ce qui suit :</p> <p>2.1 Le mariage requiert le consentement libre et éclairé de deux personnes à se prendre mutuellement pour époux.</p> <p>2.2 Nul ne peut contracter mariage avant d'avoir atteint l'âge de seize ans.</p> <p>2.3 Nul ne peut contracter un nouveau mariage avant que tout mariage antérieur ait été dissous par le décès ou le divorce ou frappé de nullité par ordonnance d'un tribunal.</p>	<p>Cet article modifie la <i>Loi sur le mariage civil</i> en vue de codifier à l'échelle nationale l'exigence juridique existante de consentement libre et éclairé au mariage (nouvel article 2.1). Cette exigence est prévue à l'article 5 de la <i>Loi d'harmonisation n° 1 du droit fédéral avec le droit civil</i>, uniquement pour la province de Québec, et en common law (décisions judiciaires) pour les résidents d'autres provinces et territoires.</p> <p>Le nouvel article 2.2 prévoit d'instituer à l'échelle nationale un nouvel âge minimal de 16 ans pour contracter mariage, âge en dessous duquel aucun mariage ne peut être contracté. Cet âge minimum est prévu à l'article 6 de la <i>Loi d'harmonisation n° 1 du droit fédéral avec le droit civil</i>, uniquement pour la province de Québec. En ce qui a trait à d'autres provinces et territoires, les lois fédérales ne prévoient pas encore un âge minimum, et il y a débat à ce sujet en common law : certains établissent l'âge à douze ans pour les filles et quatorze ans pour les garçons, et d'autres, à sept ans pour tous.</p> <p>Le nouvel article 2.3 codifie à l'échelle nationale l'exigence juridique existante de dissolution de tout mariage antérieur qui est prévue dans les lois fédérales (article 7 de la <i>Loi d'harmonisation n° 1 du droit fédéral avec le droit civil</i> et article 4 de la <i>Loi sur le mariage civil</i>) et qui est renforcée par les articles 290, 291 et 293 du <i>Code criminel</i>.</p>
4	<p><i>Loi sur le mariage civil</i> (L.C. 2005, ch. 33)</p>	<p>4. Le paragraphe 5(3) de la version anglaise de la même loi</p>	<p>Cet article modifie la version anglaise existante du paragraphe 5(3) en vue de remplacer l'expression</p>

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<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
	<p>5(3) Toute ordonnance d'un tribunal rendue au Canada ou à l'étranger avant l'entrée en vigueur du présent paragraphe et annulant le mariage ou accordant le divorce aux époux dissout le mariage, pour l'application du droit canadien, à compter de la date de sa prise d'effet.</p>	<p>est remplacé par ce qui suit :</p> <p>5(3) Any court order, made in Canada or elsewhere before the coming into force of this subsection, that declares the marriage to be null or that grants a divorce to the spouses dissolves the marriage, for the purposes of Canadian law, as of the day on which the order takes effect.</p>	<p>« null and void » par « null » afin de se conformer au nouvel article 2.3 et de traduire les préoccupations bijuridiques. Il n'est pas nécessaire d'apporter des modifications à la version française existante.</p>
<p>5</p>	<p>Code criminel (L.R.C. (1985), ch. C-46)</p> <p>150.1 (2.1) Lorsqu'une personne est accusée d'une infraction prévue aux articles 151 ou 152, au paragraphe 173(2) ou à l'article 271 à l'égard d'un plaignant âgé de quatorze ans ou plus mais de moins de seize ans, le fait que le plaignant a consenti aux actes à l'origine de l'accusation constitue un moyen de défense si l'une des conditions suivantes est remplie :</p> <p>a) l'accusé, à la fois :</p> <p>(i) est de moins de cinq ans l'aîné du plaignant,</p> <p>(ii) n'est ni une personne en situation d'autorité ou de confiance vis-à-vis du plaignant ni une personne à</p>	<p>5. Le paragraphe 150.1(2.1) du Code criminel est remplacé par ce qui suit :</p> <p>(2.1) Lorsqu'une personne est accusée d'une infraction prévue aux articles 151 ou 152, au paragraphe 173(2) ou à l'article 271 à l'égard d'un plaignant âgé de quatorze ans ou plus mais de moins de seize ans, le fait que le plaignant a consenti aux actes à l'origine de l'accusation constitue un moyen de défense si l'accusé, à la fois :</p> <p>a) est de moins de cinq ans l'aîné du plaignant ;</p> <p>b) n'est ni une personne en situation d'autorité ou de confiance vis-à-vis du</p>	<p>Cet article abroge l'alinéa 150.1(2.1)<i>b</i>) du <i>Code criminel</i>, qui prévoit une exception pour certaines infractions d'ordre sexuel mettant en cause un enfant âgé entre 14 et 16 ans dans le cas où le plaignant et l'accusé sont mariés. Cette exception a été créée précisément parce que, à l'époque où l'âge de consentement est passé de 14 à 16 ans (dans la <i>Loi sur la lutte contre les crimes violents</i>, 2008), il était connu que, dans certaines provinces, des enfants entre 14 et 16 ans pouvaient légalement se marier avec le consentement de leurs parents ou des tribunaux, et pouvaient donc être en mesure de consentir à des relations sexuelles.</p> <p>Le présent projet de loi établit l'âge minimum absolu pour se marier à 16 ans. À compter de l'entrée en vigueur des modifications à la <i>Loi sur le mariage civil</i> prévues dans ce projet de loi, les mariages de personnes âgées entre 14 et 16 ans au Canada ne seront plus valides sur le plan légal.</p> <p>Cependant, des mariages de personnes âgées de moins</p>

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<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
	<p>l'égard de laquelle celui-ci est en situation de dépendance ni une personne qui est dans une relation où elle exploite le plaignant;</p> <p>b) l'accusé est marié au plaignant.</p>	<p>plaignant ni une personne à l'égard de laquelle celui-ci est en situation de dépendance ni une personne qui est dans une relation où elle exploite le plaignant.</p> <p>L'article 150.1 de la même loi est modifié par adjonction, après le paragraphe (2.2), de ce qui suit :</p> <p>(2.3) Si, avant la date d'entrée en vigueur du présent paragraphe, l'accusé visé au paragraphe (2.1) est marié au plaignant, constitue un moyen de défense le fait que la plaignant a consenti aux actes à l'origine de l'accusation.</p>	<p>de 16 ans pourraient être célébrés peu de temps avant que les modifications à la <i>Loi sur le mariage civil</i> prévues dans ce projet de loi entrent en vigueur. Pour ce motif, cet article modifie également le <i>Code criminel</i> pour y ajouter une disposition de transition visant à créer une exception applicable aux infractions désignées lorsque l'accusé, à la date de l'entrée en vigueur des modifications à la <i>Loi sur le mariage civil</i> prévues dans ce projet de loi, est marié au plaignant qui n'a pas encore atteint l'âge de 16 ans.</p>
6	<p><i>Code criminel</i> (L.R.C. (1985), ch. C-46)</p> <p>232(2) Une action injuste ou une insulte de telle nature qu'elle suffise à priver une personne ordinaire du pouvoir de se maîtriser, est une provocation pour l'application du présent article, si l'accusé a agi sous l'impulsion du moment et avant d'avoir eu le temps de reprendre son sang-froid.</p>	<p>6. (1) Le paragraphe 232(2) du <i>Code criminel</i> est remplacé par ce qui suit :</p> <p>(2) Une <u>conduite de la victime, qui constituerait un acte criminel prévu à la présente loi passible d'un emprisonnement de cinq ans ou plus</u>, de telle nature qu'elle suffise à priver une personne ordinaire du pouvoir de se maîtriser est une provocation pour l'application du présent</p>	<p>Cet article modifie le <i>Code criminel</i> en vue de réduire l'application de la défense partielle de provocation en remplaçant l'expression « une action injuste ou une insulte » de la victime prévue au paragraphe 232(2) par « une conduite de la victime qui constituerait un acte criminel prévu à la présente loi passible d'un emprisonnement de cinq ans ou plus. »</p> <p>Cet article remplace également l'expression « une action injuste ou une insulte » de la victime prévue à l'alinéa 232(3)a par « la conduite de la victime » et renvoie au paragraphe 232(2).</p>

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<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
	<p>232(3)</p> <p><i>a)</i> si une action injuste ou une insulte déterminée équivalait à une provocation;</p>	<p>article si l'accusé a agi sous l'impulsion du moment et avant d'avoir eu le temps de reprendre son sang-froid.</p> <p>(2) L'alinéa 232(3)a) de la même loi est remplacé par ce qui suit :</p> <p><i>a)</i> si <u>la conduite de la victime</u> équivalait à une provocation <u>au titre du paragraphe (2)</u>;</p>	<p>Lorsqu'elle est fructueuse, la défense de provocation entraîne un acquittement à l'égard de l'accusation de meurtre, même s'il a été conclu que la personne a commis un meurtre hors de tout doute raisonnable. Cette défense donne ainsi lieu à une déclaration de culpabilité d'homicide involontaire coupable, dont la peine maximale est l'emprisonnement à perpétuité. Il n'y a pas de peine minimale pour l'homicide involontaire coupable, sauf dans le cas où une arme à feu a été utilisée; la peine minimale est alors de quatre ans.</p>
<p>7</p>	<p><i>Code criminel</i> (L.R.C. (1985), ch. C-46)</p> <p>N/A</p>	<p>7. Le paragraphe 273.3(1) de la même loi est modifié par adjonction, après l'alinéa c), de ce qui suit :</p> <p><i>d)</i> est âgée de moins de dix-huit ans, avec l'intention que soit commis à l'étranger un acte qui, s'il était commis au Canada, constituerait une infraction visée à l'article 293.1, ou est âgée de moins de seize ans, avec l'intention que soit commis à l'étranger un acte qui, s'il était commis au Canada, constituerait une infraction visée à l'article 293.2.</p>	<p>Cet article modifie l'infraction prévue au <i>Code criminel</i> concernant le passage d'enfants à l'étranger avec l'intention que soit commis à l'étranger un acte qui constituerait au Canada une infraction désignée, en créant deux nouvelles infractions désignées.</p> <p>Selon le nouvel alinéa 273.3(1)d), commet une infraction, quiconque agit dans le but de faire passer à l'étranger une personne résidant habituellement au Canada qui est âgée de moins de dix-huit ans avec l'intention de marier celle-ci contre son gré (acte qui constituerait une infraction lorsqu'il a lieu au Canada en vertu de l'article 8.)</p> <p>De plus, selon le nouvel alinéa 273.3(1)d), commet une infraction, quiconque agit dans le but de faire passer à l'étranger une personne résidant habituellement au Canada qui est âgée de moins de seize ans avec l'intention que celle-ci soit mariée (acte qui constituerait une infraction lorsqu'il a lieu au Canada en vertu de</p>

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<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
			<p>l'article 8)</p> <p>Quiconque commet l'infraction existante de prendre des mesures en vue de faire passer à l'étranger un enfant aux fins de certaines infractions est passible d'un emprisonnement maximal de cinq ans par voie de mise en accusation ou d'un emprisonnement maximal de six mois par procédure sommaire, comme le prévoit le paragraphe 273.3(2) actuel.</p>
8	<p><i>Code criminel</i> (L.R.C. (1985), ch. C-46)</p> <p>N/A</p>	<p>8. La même loi est modifiée par adjonction, après l'article 293, de ce qui suit :</p> <p>293.1 Est coupable d'acte criminel et passible d'un emprisonnement maximal de cinq ans quiconque célèbre un rite ou une cérémonie de mariage, y aide ou y participe sachant que l'une des personnes qui se marient le fait contre son gré.</p> <p>293.2 Est coupable d'acte criminel et passible d'un emprisonnement maximal de cinq ans quiconque célèbre un rite ou une cérémonie de mariage, y aide ou y participe sachant que l'une des personnes qui se marient n'a pas atteint l'âge de seize ans.</p>	<p>Cet article modifie le <i>Code criminel</i> en vue de créer deux nouvelles infractions liées au fait de célébrer une cérémonie de mariage forcé, d'y aider ou d'y participer et le fait de célébrer une cérémonie de mariage forcé d'une personne qui n'a pas atteint l'âge de seize ans, d'y aider ou d'y participer.</p> <p>Ces nouvelles infractions (articles 293.1 et 293.2) correspondent à l'infraction existante portant sur la participation à une cérémonie de mariage polygamique prévue à l'alinéa 293(1)b) du <i>Code criminel</i> et, établiraient la même peine maximale d'emprisonnement de cinq ans. Ces nouvelles infractions dénoncent une conduite qui assure activement une légitimité sociale à une pratique préjudiciable qui crée un lien juridique non désiré ou néfaste (dans le cadre duquel on s'attend à ce qu'il y ait perpétration d'une agression sexuelle et d'autres infractions).</p> <p>L'infraction ne viserait pas les participants à la cérémonie à moins qu'ils prennent certaines mesures en vue d'aider à ce que le mariage ait lieu, étant donné que les tribunaux ont clairement précisé que la responsabilité</p>

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<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
			criminelle ne peut reposer sur une présence passive sur le lieu d'un crime.
9	<p>Code criminel (L.R.C. (1985), ch. C-46)</p> <p>295. Est coupable d'un acte criminel et passible d'un emprisonnement maximal de deux ans quiconque, étant légalement autorisé à célébrer le mariage, célèbre sciemment et volontairement un mariage en violation des lois de la province où il est célébré.</p>	<p>9. L'article 295 de la même loi est remplacé par ce qui suit :</p> <p>295. Est coupable d'acte criminel et passible d'un emprisonnement maximal de deux ans quiconque, étant légalement autorisé à célébrer le mariage, célèbre sciemment un mariage en violation <u>du droit fédéral ou</u> des lois de la province où il est célébré.</p>	<p>Cet article modifie l'infraction au <i>Code criminel</i> pour célébration d'un mariage contraire à la loi (article 295) afin de préciser qu'elle vise également la célébration d'un mariage en violation du droit fédéral.</p> <p>L'infraction actuelle s'applique aux célébrants légalement autorisés qui célèbrent un mariage contrairement aux lois de la province où il est célébré. Étant donné que les gouvernements fédéral et provinciaux partagent des compétences constitutionnelles en matière de mariage, les lois provinciales concernant « la célébration du mariage » exigent le respect du droit fédéral pour obtenir la validité en droit du mariage. Cependant, cette exigence n'est peut-être pas clairement exprimée dans le texte législatif. La modification proposée préciserait que l'infraction interdit à un célébrant légalement autorisé de célébrer un mariage en violation du droit fédéral, y compris mais sans s'y limiter, le mariage forcé ou le mariage de personnes n'ayant pas atteint l'âge requis.</p>
10	<p>Code criminel (L.R.C. (1985), ch. C-46)</p> <p>N/A</p>	<p>10. La même loi est modifiée par adjonction, après l'article 810.01, de ce qui suit :</p> <p>810.02 (1) Quiconque a des motifs raisonnables de craindre qu'une personne commettra une</p>	<p>Cet article modifie le <i>Code criminel</i> en prévoyant une nouvelle ordonnance d'engagement (ou engagement de ne pas troubler d'ordre public) à l'article 810.02 que le juge d'une cour provinciale peut rendre s'il est convaincu qu'une personne craint raisonnablement qu'une autre personne commette une infraction en vertu du nouvel alinéa 273.3(1)d) (Passage d'enfants à</p>

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<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
		<p>infraction prévue à l'alinéa 273.3(1)<i>a</i>) ou aux articles 293.1 ou 293.2 peut déposer une dénonciation devant un juge d'une cour provinciale.</p> <p>(2) Le juge qui reçoit la dénonciation peut faire comparaître les parties devant un juge de la cour provinciale.</p> <p>(3) Le juge devant lequel les parties comparaissent peut, s'il est convaincu par la preuve apportée que les craintes du dénonciateur sont fondées sur des motifs raisonnables, ordonner que le défendeur contracte l'engagement de ne pas troubler l'ordre public et d'observer une bonne conduite pour une période maximale de douze mois.</p> <p>(4) Toutefois, s'il est convaincu en outre que le défendeur a déjà été reconnu coupable d'une infraction visée au paragraphe (1), le juge peut lui ordonner de contracter l'engagement pour une période maximale de deux ans.</p> <p>(5) Le juge peut infliger au</p>	<p>l'étranger en vue de mariages forcés ou de mariages de personnes de moins de 16 ans) ou du nouvel article 293.1 (participer à une cérémonie de mariage forcé) ou du nouvel article 293.2 (participer à une cérémonie de mariage d'une personne de moins de 16 ans).</p> <p>Conformément à toutes les autres dispositions relatives à l'engagement de ne pas troubler l'ordre public figurant au <i>Code</i>, les paragraphes (2) à (9) prévoient des mécanismes procéduraux, des mécanismes de sanctions et des conditions susceptibles d'être imposés en lien avec l'engagement.</p> <p>La plupart des conditions prévues au paragraphe 810.02(6) sont communes à toutes les dispositions relatives à l'engagement de ne pas troubler l'ordre public. Les alinéas 810.02(6)<i>a</i>) à <i>c</i>) et <i>e</i>) sont particulièrement pertinents dans le cas de mariage forcé ou de mariage de personnes de moins de 16 ans. Ils autorisent le tribunal à ordonner :</p> <ul style="list-style-type: none"> • qu'il soit interdit au défendeur de conclure d'accords ou d'arrangements relatifs au mariage forcé (alinéa 810.02(6)<i>a</i>)). Cette condition pourrait s'appliquer à un comportement non criminel, tel que la présentation d'accords écrits ou oraux pour marier de force son enfant ou la réservation d'un endroit pour la cérémonie d'un mariage forcé ou du mariage d'une personne n'ayant pas atteint l'âge requis; • qu'il soit interdit au défendeur de faire des démarches pour faire sortir du ressort territorial du tribunal la personne à l'égard de laquelle il y a

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<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
		<p>défendeur qui omet ou refuse de contracter l'engagement une peine d'emprisonnement maximale de douze mois.</p> <p>(6) S'il estime souhaitable pour garantir la bonne conduite du défendeur, le juge peut assortir l'engagement de condition raisonnables lui intimant notamment :</p> <p>a) de ne pas conclure d'accord s ou d'arrangement relatifs au mariage, au Canada, ou à l'étranger, de la personne à l'égard de laquelle il y a crainte que l'infraction visée par la dénonciation sera commise;</p> <p>b) de ne pas faire de démarches pour faire sortir du ressort territorial du tribunal la personne à l'égard de laquelle il y a crainte que l'infraction visé par la dénonciation sera commise;</p> <p>c) de déposer, de la manière précisée dans l'engagement, tout passeport ou autre document de voyage, qui est en sa possession ou en son</p>	<p>crainte que l'infraction visée par la dénonciation sera commise, telles que faire des arrangements de voyage dans l'intention de marier cette personne contre son gré ou avant qu'elle ait atteint l'âge requis, dans un autre ressort (alinéa 810.02(6)b));</p> <ul style="list-style-type: none"> • qu'il soit interdit au défendeur de déposer tout passeport ou autre document de voyage qui est en sa possession, décerné au nom de toute personne qui est identifiée, de la manière précisée par le tribunal (p. ex., les passeports canadiens pourraient devoir être remis à la direction générale de l'intégrité des passeports de Citoyenneté et Immigration Canada)(alinéa 810.02(6)c)); • que le défendeur participe à un programme de traitement, notamment un programme d'aide en matière de violence familiale, en particulier des programmes qui comportent des volets sur l'égalité entre les sexes (alinéa 810.02(6)e)).

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<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
		<p>contrôle, qu'il soit décerné à son nom ou au nom de toute autre personne qui est identifiée dans l'engagement;</p> <p>d) de s'abstenir de communiquer, directement ou indirectement, avec toute personne identifiée dans l'engagement ou d'aller dans un lieu qui y est mentionné, si ce n'est en conformité avec les conditions qui y sont prévues et que le juge estime nécessaires;</p> <p>e) de participer à un programme de traitement, notamment un programme d'aide en matière de violence familiale;</p> <p>f) de rester dans une région donnée, sauf permission écrite qu'il pourrait lui accorder;</p> <p>g) de regagner sa résidence et d'y rester aux moments précisés dans l'engagement.</p> <p>(7) Le juge doit décider s'il est souhaitable pour la sécurité du défendeur, ou pour celle d'autrui, de lui interdire d'avoir</p>	

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<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
		<p>en sa possession des armes à feu, arbalètes, armes prohibées, armes à autorisation restreinte, dispositifs prohibés, munitions, munitions prohibées et substances explosives, ou l'un ou plusieurs de ces objets, et, dans l'affirmative, il doit assortir l'engagement d'une condition à cet effet et y prévoir la période d'application de celle-ci.</p> <p>(8) Le cas échéant, l'engagement prévoit la façon de remettre, de détenir ou d'entreposer les objets visés au paragraphe (7) qui sont en la possession du défendeur, ou d'en disposer, et de remettre les autorisations, permis et certificats d'enregistrement dont celui-ci est titulaire.</p> <p>(9) Tout juge de la cour provinciale peut, sur demande du dénonciateur ou du défendeur, modifier les conditions fixées dans l'engagement.</p>	
11	<p><i>Code criminel</i> (L.R.C. (1985), ch. C-46)</p> <p>811. Quiconque viole l'engagement</p>	<p>11. Le passage de l'article 811 de la même loi précédant l'alinéa a) est remplacé par ce qui suit :</p>	<p>Cet article modifie l'infraction au <i>Code criminel</i> pour manquement à l'engagement (engagement de ne pas troubler l'ordre public) pour qu'il soit fait mention de la nouvelle ordonnance d'engagement dans le cas de</p>

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<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
	prévu aux articles 83.3, 810, 810.01, 810.1 ou 810.2 est coupable :	811. Quiconque viole l'engagement prévu aux articles 83.3, 810, 810.01, <u>810.02</u> , 810.1 ou 810.2 est coupable :	mariage forcé ou de mariage d'une personne n'ayant pas atteint l'âge requis.
12	<i>Loi sur les prisons et les maisons de correction (L.R.C. (1985), ch. P-20)</i> Individu incarcéré dans une prison soit par suite d'une condamnation pour infraction aux lois fédérales ou à leurs règlements d'application, soit pour avoir omis ou refusé de contracter un engagement aux termes des articles 810, 810.1 ou 810.2 du <i>Code criminel</i> , à l'exception :	12. Le passage de la définition de « prisonnier », au paragraphe 2(1) de la <i>Loi sur les prisons et les maisons de correction</i>, précédant l'alinéa a) est remplacée par ce qui suit : « prisonnier » Individu incarcéré dans une prison soit par suite d'une condamnation pour infraction aux lois fédérales ou à leurs règlements d'application, soit pour avoir omis ou refusé de contracter un engagement aux termes des articles 810, <u>810.02</u> , 810.1 or 810.2 du <i>Code criminel</i> ;	L'article 12 du projet de loi crée un nouvel engagement de ne pas troubler l'ordre public, l'article 810.02, qui autorise un juge à imposer au délinquant de se conformer à des conditions strictes pour s'assurer qu'il ne commettra pas l'une des nouvelles infractions relatives au mariage forcé ou au mariage d'une personne de moins de 16 ans. Si le délinquant enfreint ces conditions, le tribunal peut lui infliger un emprisonnement allant jusqu'à 12 mois. Pour que le délinquant soit légalement détenu dans une prison provinciale, l'article 810.02 doit figurer dans la liste qui se trouve sous la définition du terme « prisonnier » à l'article 2 de la <i>Loi sur les prisons et les maisons de correction</i> , similaire aux dispositions actuelles sur l'engagement de ne pas troubler l'ordre public.
13	<i>Loi sur le système de justice pénale pour les adolescents (L.C. 2002, ch. 1)</i> (2) Le tribunal a aussi compétence pour rendre à l'égard d'un adolescent l'ordonnance visée aux articles 810 (engagement — crainte de blessures	13. Le paragraphe 14(2) de la <i>Loi sur le système de justice pénale pour les adolescents</i> est remplacé par ce qui suit : (2) Le tribunal a aussi compétence pour rendre à l'égard d'un adolescent	L'article 13 modifierait le paragraphe 14(2) de la <i>Loi sur le système de justice pénale pour les adolescents</i> (LSJPA) pour qu'il soit fait mention du nouvel engagement de ne pas troubler l'ordre public (engagement) visant à empêcher le mariage forcé ou le mariage de personnes n'ayant pas atteint l'âge requis, lequel confère le pouvoir au tribunal pour adolescents de rendre des ordonnances en vertu des dispositions

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<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
	ou dommages), 810.01 (engagement — crainte d'actes de gangstérisme) ou 810.2 (engagement — crainte de sévices à la personne) du <i>Code criminel</i> ; dans le cas où l'adolescent omet ou refuse de contracter l'engagement prévu à ces articles, le tribunal peut lui imposer une des sanctions prévues au paragraphe 42(2) (peines spécifiques), sauf que, si la sanction est imposée en vertu de l'alinéa 42(2) <i>n</i>) (ordonnance de placement et de surveillance), celle-ci ne peut excéder trente jours.	l'ordonnance visée aux articles 810 (engagement — crainte de blessures ou dommages), 810.01 (engagement — crainte d'actes de gangstérisme), 810.02 (engagement — crainte de mariage forcé ou de mariage de personnes de moins de seize ans) ou 810.2 (engagement — crainte de sévices graves à la personne) du <i>Code criminel</i> ; dans le cas où l'adolescent omet ou refuse de contracter l'engagement prévue à ces articles, le tribunal peut lui imposer une des sanctions prévues au paragraphe 42(2) (peines spécifiques), sauf que, si la sanction est imposée en vertu de l'alinéa 42(2) <i>n</i>) (ordonnance de placement et de surveillance), celle-ci ne peut excéder trente jours.	relatives à l'engagement prévues au <i>Code criminel</i> , sauf dans le cas où l'engagement peut avoir une incidence négative sur l'adolescent. Des études sur le mariage forcé indiquent que plus d'un membre de la famille peut user de la force en vue de forcer une personne à se marier (p. ex., voies de fait, menaces, séquestration). Les aînés de la famille peuvent être astreints par leurs parents à forcer un frère ou une sœur à se marier ou y contribuer. Par conséquent, il est très possible que ces engagements préventifs puissent être imposés non seulement à l'égard des parents mais également à l'égard des frères, sœurs ou cousins qui ont usé de la force contre la victime en vue de l'obliger à se marier contre son gré. Certaines de ces personnes peuvent être âgées entre 12 et 18 ans et relever ainsi de la LSJPA.
14	<i>Loi sur le système de justice pénale pour les adolescents (L.C. 2002, ch. 1)</i> a) aux ordonnances rendues en vertu des articles 810 (engagement — crainte de blessures ou dommages), 810.01 (engagement — crainte d'actes de gangstérisme) ou 810.2	14. L'alinéa 142(1)a) de la même loi est remplacé par ce qui suit : a) aux ordonnances rendues en vertu des articles 810 (engagement — crainte de blessures ou dommages), 810.01 (engagement — crainte d'actes	Cet article modifie l'alinéa 142(1)a) de la LSJPA pour qu'il soit fait mention du nouvel engagement de ne pas troubler l'ordre public (engagement) visant à empêcher le mariage forcé ou le mariage de personnes n'ayant pas atteint l'âge requis dans l'application des dispositions relatives à l'engagement au titre de la partie XXVII du <i>Code</i> dans les poursuites intentées en vertu de la LSJPA.

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<u>Article</u>	<u>Loi existante</u>	<u>Projet de loi</u>	<u>Explication</u>
	(engagement — crainte de sévices à la personne) du <i>Code criminel</i> ou aux infractions prévues à l'article 811 (manquement à l'engagement) de cette loi;	de gangstérisme), 810.02 (engagement — crainte de mariage forcé ou de mariage de personnes de moins de seize ans) ou 810.2 (engagement — crainte de sévices graves à la personne) du <i>Code criminel</i> ou aux infractions prévues à l'article 811 (manquement à l'engagement) de cette loi;	
15	N/A	15. (1) La partie 1 entre en vigueur à la date fixée par décret. (2) La partie 3 entre en vigueur à la date fixée par décret.	

Questions and Answers for the Tabling of the *Zero Tolerance for Barbaric Cultural Practices Act*

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BACKGROUND

CONTEXTE

1. What is the purpose of this Bill?

This Bill is designed to deliver on the commitment in the 2013 Speech From The Throne to ensure that the inhumane practices of early and forced marriage, and other forms of barbaric cultural practices such as polygamy and “honour” - based violence, do not occur on Canadian soil. The Bill enhances legal protections for vulnerable Canadians, particularly women and children, from these insidious forms of family violence.

1. Quel est l'objectif de ce projet de loi?

Ce projet de loi vise à remplir l'engagement pris dans le discours du Trône de 2013 de veiller à ce que les pratiques barbares que constituent le mariage précoce et le mariage forcé et les autres formes de pratiques culturelles préjudiciables comme la polygamie et la violence liée à « l'honneur » n'aient pas lieu sur le sol canadien. Le projet de loi renforce la protection juridique des Canadiens vulnérables, en particulier des femmes et des enfants, contre ces formes de violence familiale insidieuse.

2. What are the main changes to legislation?

The Bill would amend three Acts: the *Immigration and Refugee Protection Act* (IRPA), the *Civil Marriage Act* and the *Criminal Code*. The IRPA would be amended to include a new ground of inadmissibility for any foreign national and permanent resident who practices or intends to practice polygamy in Canada. This new provision is in addition to current IRPA inadmissibilities for criminality and will strengthen the availability of tools within the immigration program to prevent polygamy to initiate removal action against foreign nationals and permanent residents where evidence is available.

The Bill would amend the *Civil Marriage Act* to legislate across Canada two existing legal requirements for a valid marriage – the requirement for free and enlightened consent, and the requirement for ending any existing marriage prior to entering another. These legal requirements currently exist in federal legislation that applies in the Province of Quebec only and in the common law (court decisions) for residents of other provinces and territories. The Bill would also establish a new national minimum age for marriage of 16,

below which no marriage could be contracted. This legal requirement currently exists only in federal legislation that applies in the Province of Quebec. The common law (court decisions) for residents of other provinces and territories is sometimes interpreted as setting a minimum age of 14 for boys and 12 for girls, and sometimes as low as age 7. This proposed amendment would provide equal protection to all Canadian children by setting the minimum age at 16 across Canada.

The Bill would also amend the *Criminal Code* to:

- amend the existing offence prohibiting a legally-authorized officiant from knowingly solemnizing a marriage contrary to provincial law to clarify that this also includes a marriage that is contrary to federal law, including a forced marriage or a marriage under the age of 16 – this offence is punishable by up to two years in prison;
- create a new offence prohibiting the active and knowing participation in a forced marriage ceremony by any person, including parents or other family members of the person being forced to marry, or the performance of a forced marriage ceremony, whether or not the person is legally authorized - this offence would be punishable by a maximum of five years' imprisonment;
- create a new offence prohibiting the active and knowing participation in a marriage ceremony involving a person under the age of 16, by any person, including parents or other family members of the person who is underage, or the performance of an underage marriage ceremony, whether or not the person is legally authorized - this offence would be punishable by a maximum of five years' imprisonment;
- extend the existing offence of removing a child from Canada for the purpose of having certain offences committed abroad to include the removal of a child for the purpose of a forced marriage or a marriage under the age of 16 outside of Canada – this offence is punishable by a maximum of five years' imprisonment;
- introduce a new peace bond that gives the court power to impose conditions on a person where there are reasonable grounds to fear that a forced marriage or a marriage under the age of 16 may occur; and
- limit the application of the defence of provocation (which applies to reduce convictions of murder committed in the heat of passion to manslaughter) so that it applies only in circumstances where the victim's provocative conduct would constitute an offence under the *Criminal Code* punishable by at least 5 years in prison. This would mean the defence could not be used in "honour" killing cases where the conduct that provokes the killing typically involves the victim making personal choices about lifestyle or relationships that displeases the family or is perceived to bring the family shame or dishonour.

2. Quels sont les principaux changements apportés à la législation?

Ce projet de loi modifierait trois lois : la *Loi sur l'immigration et la protection des réfugiés* (LIPR), la *Loi sur le mariage civil* et le *Code criminel*. La LIPR serait modifiée de façon à ajouter un nouveau motif d'interdiction de territoire pour tout étranger ou résident permanent qui pratique ou a l'intention de pratiquer la polygamie au Canada. Cette nouvelle disposition vient s'ajouter aux interdictions de territoire actuelles prévues par la LIPR pour criminalité et renforcera la disponibilité d'outils dans le programme d'immigration pour prévenir la polygamie et lancer des mesures de renvoi à l'encontre d'étrangers et de résidents permanents lorsqu'on dispose de preuves.

Le projet de loi modifierait la *Loi sur le mariage civil* afin de prévoir des mesures législatives dans tout le Canada visant deux exigences juridiques existantes pour un mariage valide : l'exigence visant le consentement libre et éclairé et l'exigence liée à la dissolution de tout mariage existant avant de pouvoir en contracter un nouveau. Ces exigences juridiques existent actuellement dans la législation fédérale qui s'applique uniquement dans la province du Québec et dans la common law (décisions des tribunaux) pour les résidents des autres provinces et territoires. Le projet de loi établirait également un nouvel âge minimum national de 16 ans pour le mariage, en dessous duquel aucun mariage ne peut être contracté. Actuellement, cette exigence juridique existe uniquement dans la législation fédérale qui s'applique dans la province du Québec. La common law (décisions des tribunaux) pour les résidents des autres provinces et territoire est parfois interprétée comme établissant un âge minimum de 14 ans pour les garçons et de 12 ans pour les filles, parfois même d'aussi peu que 7 ans. La modification proposée offrirait une protection égale à tous les enfants canadiens en fixant l'âge minimum à 16 ans dans tout le Canada.

Le projet de loi modifierait le *Code criminel* de façon à :

- Changer l'infraction existante interdisant à un célébrant autorisé par la loi de célébrer sciemment un mariage contraire à la loi provinciale afin de préciser que cela inclut également les mariages qui sont contraires à la loi fédérale, notamment les mariages forcés ou précoces (personnes âgées de moins de 16 ans) – cette infraction est punissable d'une peine d'emprisonnement maximale de deux ans;
- Créer une nouvelle infraction interdisant la participation active et consciente de toute personne à une cérémonie de mariage forcé, y compris les parents et autres membres de la famille de la personne contrainte à se marier, ou la célébration d'une cérémonie de mariage forcé, que la personne soit autorisée par la loi ou non – cette infraction serait punissable d'une peine d'emprisonnement maximale de cinq ans;
- Créer une nouvelle infraction interdisant la participation active et consciente de toute personne à une cérémonie de mariage visant une personne âgée de moins de 16 ans, y

compris les parents et autres membres de la famille de la personne qui n'est pas en âge de se marier, ou la célébration d'une cérémonie de mariage précoce, que la personne soit autorisée par la loi ou non – cette infraction serait punissable d'une peine d'emprisonnement maximale de cinq ans;

- Élargir l'infraction existante que constitue le fait de sortir un enfant du Canada afin de commettre certaines infractions à l'étranger de façon à inclure le transfert d'un enfant hors du Canada aux fins d'un mariage forcé ou précoce (personnes de moins de 16 ans) – cette infraction est punissable d'une peine d'emprisonnement maximale de cinq ans;
- Mettre en place un nouvel engagement de ne pas troubler l'ordre public, conférant au tribunal le pouvoir d'imposer des conditions à une personne lorsqu'il existe des motifs raisonnables de croire qu'un mariage forcé ou précoce (moins de 16 ans) pourrait être célébré;
- Limiter l'application de la défense de provocation (visant à réduire les condamnations pour meurtre commis sous l'empire de la passion à des homicides involontaires) afin qu'elle s'applique uniquement dans les circonstances où le comportement provocateur de la victime constitue une infraction en vertu du *Code criminel* punissable d'une peine d'emprisonnement minimale de cinq ans. Cela signifierait que cette défense ne pourrait pas être utilisée dans les cas de meurtres « d'honneur » lorsque le comportement qui a provoqué le meurtre est un choix personnel de mode de vie ou de relation de la victime, qui a déplu à la famille ou a été perçu comme apportant la honte ou le déshonneur à la famille.

3. Will Canadians be affected by these changes?

Canadians who are vulnerable to these insidious forms of family violence will be better protected by these amendments. There are no reliable statistics setting out the number of early, forced or polygamous marriages, or of crimes committed in the name of "honour" in Canada. These particular practices do not occur exclusively in any one community, culture or religion. In fact, known cases of polygamy, forced marriage and "honour" crimes have occurred in families from a range of religious and cultural backgrounds.

3. Les Canadiens seront-ils touchés par ces changements?

Les Canadiens qui sont vulnérables à ces formes de violence familiale insidieuse seront mieux protégés par ces modifications. On ne dispose d'aucune statistique fiable sur le nombre de mariages précoces, forcés ou polygames ou de crimes commis au nom de « l'honneur » au Canada. Ces pratiques particulières ne sont pas observées exclusivement dans une seule communauté, culture ou religion. En fait, des cas connus de polygamie, de

mariage forcé et « d'honneur » ont eu lieu dans toutes sortes de contextes religieux et culturels.

4. Why is the Bill called the “Zero Tolerance for Barbaric Cultural Practices Act”?

In the October 2013 Speech from the Throne, the Government of Canada acknowledged that a free and healthy society requires the full participation of women, and committed to ensuring that early and forced marriage and barbaric cultural practices that impede women's full participation through violence do not occur on Canadian soil. The term “barbaric cultural practices” encompasses forms of family violence, such as child, forced and polygamous marriage, and honour-based violence.

The Bill addresses gaps in the *Immigration and Refugee Protection Act*, the *Civil Marriage Act* and the *Criminal Code* regarding the protection of the victims of these barbaric acts. These practices have devastating impacts, particularly on women and girls as well as on families and society in general. They severely affect all those involved, from influencing immigration outcomes to breaking down opportunities for integration and success. The Bill affirms the Government's strong stance against these practices, and sends the message that such acts are contrary to Canadian values, unacceptable to Canadians, and will not be tolerated in Canada.

This Bill makes a clear statement that Canadian hospitality does not extend to accepting barbaric cultural practices in any form. Anyone living in Canada must adhere to Canadian laws and values. We condemn all forms of violence, including cultural or customary practices that cause harm, particularly to women and girls. We will continue to work with our stakeholders to ensure that everyone, including those in minority communities, have access to services.

4. Pourquoi le projet loi porte-t-il le nom de « Loi sur la tolérance zéro face aux pratiques culturelles barbares »?

Dans le discours du Trône d'octobre 2013, le gouvernement du Canada a reconnu que les femmes doivent participer pleinement à la société pour que celle-ci soit libre et saine. Il s'est également engagé à veiller à ce que le mariage précoce et forcé, de même que les pratiques barbares, qui empêchent les femmes de participer pleinement à la société au moyen de la violence ne se produisent pas sur le territoire canadien. Le terme « pratiques culturelles barbares » englobe diverses formes de violence familiale, notamment les mariages d'enfants, les mariages forcés et polygames, et la violence liée à « l'honneur »

Le projet de loi comble les lacunes dans la *Loi sur l'immigration et la protection des réfugiés*, la *Loi sur le mariage civil* et le *Code criminel* concernant la protection des victimes de ces actes barbares. Ces pratiques ont des répercussions dévastatrices, particulièrement sur les femmes et les filles, de même que sur les familles et la société en général. Elles ont de graves conséquences sur toutes les personnes touchées et peuvent notamment influencer sur les résultats en matière d'immigration, réduire les possibilités d'intégration et nuire aux chances de réussite. Le projet de loi affirme la position ferme du gouvernement contre ces pratiques, et envoie le message que ces pratiques sont contraires aux valeurs canadiennes, qu'elles sont inacceptables pour les Canadiens et Canadiennes, et qu'elles ne seront pas tolérées au Canada.

Ce projet de loi énonce clairement que l'hospitalité canadienne ne s'étend pas à l'acceptation de la violence. Quiconque vit au Canada doit respecter ses lois et adhérer à ses valeurs. Nous condamnons toute forme de violence. Nous continuerons de collaborer avec nos intervenants pour veiller à ce que tous, y compris les communautés minoritaires, aient accès à des services.

5. What is a forced marriage and how does it differ from an arranged marriage?

Forced marriages are different from arranged marriages, which have longstanding traditions in many cultures and countries. In arranged marriages, the families of both spouses take a leading role in the arrangement, but both individuals have the final say about whether to enter into the marriage and provide free and enlightened consent to the marriage. Forced marriage is generally defined as a marriage in which one or both spouses do not give their free and enlightened consent to be married. Family members sometimes use emotional coercion, threats, physical violence, abduction, forcible confinement or extortion to force the person into the marriage. Incidents of forced marriage do not occur exclusively in any one ethnic or cultural community and have occurred in families from many different religious and cultural backgrounds. Men, women and children can all find themselves victims of these barbaric practices.

5. Qu'est-ce qu'un mariage forcé et en quoi est-ce différent d'un mariage arrangé?

Le mariage forcé est différent du mariage arrangé, qui fait partie des traditions dans bon nombre de cultures et de pays. Dans un mariage arrangé, les familles des deux personnes prennent l'initiative de l'arrangement, mais ce sont les deux personnes concernées qui prennent la décision finale de se marier ou non en donnant un consentement libre et éclairé. Le mariage forcé est généralement défini comme un mariage auquel un des deux époux (sinon les deux) ne donne pas son consentement libre et éclairé. Des membres de la famille peuvent avoir recours au chantage émotionnel, à des menaces, à de la violence physique, à

l'enlèvement, à la séquestration ou à l'extorsion pour forcer la personne à se marier. Des incidents de mariage forcé ne se produisent pas exclusivement dans une communauté ethnique ou culturelle, et ont lieu dans des familles provenant de nombreux milieux culturels et religieux différents. Les hommes, les femmes et les enfants peuvent tous faire l'objet de ces pratiques barbares.

6. To what degree does forced marriage occur in Canada or with Canadians abroad?

There are no nationally-representative statistics related to forced marriage in Canada. However, in August 2013, the South Asian Legal Clinic of Ontario (SALCO) released a report that received national coverage, discussing forced marriages in Ontario. According to the report, agencies in Ontario reported encountering some 219 cases involving victims of forced marriage between 2010 and 2012. The report did not indicate whether any of the forced marriages happened in Canada, but did discuss many that had occurred outside of Canada. All the individuals who were forced into marriages in this survey experienced violence. Most victims were young and from various cultures and religions. The majority of victims were unaware of their rights in a forced marriage situation. Victims were most often forced into marriage by a family member (mainly parents).

In addition, the Department of Foreign Affairs, Trade and Development (DFATD) has received approximately 100 requests for consular assistance from Canadians related to forced marriage since 2009.

6. Quelle est la proportion de mariages forcés qui ont lieu au Canada ou qui touchent des Canadiens à l'étranger?

Il n'y a aucune statistique représentative à l'échelle nationale sur les mariages forcés au Canada. Cependant, en août 2013, la South Asian Legal Clinic of Ontario (SALCO) a publié un rapport qui a fait l'objet d'une couverture médiatique nationale, dans lequel on abordait la question des mariages forcés en Ontario. D'après le rapport, des organismes en Ontario ont signalé quelque 219 cas de victimes de mariages forcés entre 2010 et 2012. Dans le rapport, on n'indiquait pas si parmi ces mariages forcés certains ont eu lieu au Canada, mais on déclarait que bon nombre de ces mariages se sont déroulés à l'extérieur du Canada. Selon cette enquête, toutes les personnes qui ont été forcées à se marier ont été victimes de violence. La plupart des victimes étaient jeunes et provenaient de différentes cultures et religions. La majorité des victimes ne connaissaient pas leurs droits dans une situation de mariage forcé. De plus, les victimes étaient le plus souvent forcées à se marier par un membre de la famille (généralement leurs parents).

En outre, le ministère des Affaires étrangères, du Commerce et du Développement (AECD) a reçu environ cent (100) demandes d'aide consulaire de la part de Canadiens relativement à des mariages forcés depuis 2009.

7. What is an early or a child marriage?

Early marriage generally refers to a marriage contracted before the parties have attained the minimum legal age of marriage of the jurisdiction in which they reside.

7. Qu'est-ce qu'un mariage précoce ou d'enfant?

Le mariage précoce s'entend d'un mariage dans lequel les deux parties n'ont pas atteint l'âge minimum légal du mariage dans le territoire où elles résident.

8. How many Canadians under the age of majority are getting married in Canada or abroad?

We do not have nationally representative statistics on marriage under the age of majority. However, vital statistical information from marriages registered in some provinces and territories is available which provides an indication of the scope of underage marriage occurring in Canada. The available data indicates that there are some marriages of minors (under 18 or 19 years of age), but that they are almost exclusively mature minors of 16 years of age or older. For instance:

- in Alberta between 2008-2012, there were 138 marriages with at least one spouse under 18 years of age;
- in Manitoba between 2003 and 2012, there were 160 marriages with at least one spouse under the age of 18 (all minors were 16 years or older);
- in Ontario between 2008 and 2012 there were 255 marriages with at least one spouse under the age of 18 (all minors were 16 years or older);
- in New Brunswick between 2007 and 2011, there were 102 marriages with at least one spouse under the age of 19 (all minors were 16 years or older);
- in Nova Scotia between 2002 -2012, there were 128 marriages with at least one spouse under the age of 19 (all minors were 16 years or older); and
- in Prince Edward Island there have been no recorded marriages involving a spouse under the age of 18.

There are no statistics available with respect to the number of Canadians under the age of majority who are getting married outside of Canada. However, child protection officials

have indicated that there are cases of minors being removed from Canada to be married abroad. They also point to the lack of tools currently at their disposal to prevent these underage marriages.

8. Combien de Canadiens n'ayant pas atteint l'âge de la majorité se marient au Canada ou à l'étranger?

Nous n'avons pas de statistique représentative à l'échelle nationale sur le mariage forcé de personnes n'ayant pas atteint l'âge de la majorité. Cependant, des renseignements sur l'état civil tirés des mariages enregistrés dans certaines provinces et certains territoires sont disponibles et nous indiquent la portée des mariages de personnes n'ayant pas atteint l'âge de la majorité au Canada. D'après les données disponibles, on compte certains mariages de mineurs (âgés de moins de 18 ou de 19 ans), mais il s'agit presque exclusivement de mineurs matures de 16 ans ou plus. Voici quelques exemples :

- en Alberta, entre 2008 et 2012, il y a eu 138 mariages comptant au moins un époux âgé de moins de 18 ans;
- au Manitoba, entre 2003 et 2012, il y a eu 160 mariages comptant au moins un époux âgé de moins de 18 ans (tous les mineurs avaient 16 ans ou plus);
- en Ontario, entre 2008 et 2012, il y a eu 255 mariages comptant au moins un époux âgé de moins de 18 ans (tous les mineurs avaient 16 ans ou plus);
- au Nouveau-Brunswick, entre 2007 et 2011, il y a eu 102 mariages comptant au moins un époux âgé de moins de 19 ans (tous les mineurs avaient 16 ans ou plus);
- en Nouvelle-Écosse, entre 2002 et 2012, il y a eu 128 mariages comptant au moins un époux âgé de moins de 19 ans (tous les mineurs avaient 16 ans ou plus);
- à l'Île-du-Prince-Édouard, aucun mariage comptant un époux âgé de moins de 18 ans n'a été répertorié.

Nous n'avons pas de statistiques relatives au nombre de Canadiens n'ayant pas atteint l'âge de la majorité qui se marient à l'étranger. Toutefois, des représentants des services de la protection de l'enfance ont fait état de cas de mineurs ayant été emmenés à l'étranger pour être mariés. Ils ont aussi souligné le manque d'outils à leur disposition, actuellement, pour prévenir ces mariages d'enfants.

9. What is "honour" - based violence?

"Honour" - based violence is violence committed against a family member, usually female, who is perceived to have brought shame or "dishonor" to the family by engaging in conduct the family does not approve of, such as pre- or extra-marital sexual relationships, dating, refusing an arranged marriage, or even sometimes associating with certain friends or

classmates. One or more family members may believe that the only way to "cleanse" the perceived shame or dishonour and restore the family's reputation is by using violence, such as assault, forcible confinement, threats, counselling suicide or killing. "Honour" - based violence can be distinguished from other forms of family violence, as it is often committed with some degree of approval and/or collusion from family and/or community members. "Honour" - based violence is often linked with forced marriage – as a means of enforcing an imposed marriage or as punishment for a refusal.

9. Qu'est-ce que la violence fondée sur « l'honneur »?

La violence liée à « l'honneur » est une violence commise à l'encontre d'un membre de la famille, habituellement de sexe féminin, qui est perçu comme ayant couvert sa famille de honte ou ayant jeté le déshonneur sur celle-ci en adoptant une conduite désapprouvée, comme le fait d'avoir des relations sexuelles avant le mariage ou en dehors du mariage, d'avoir eu une liaison ou des fréquentations réprouvées ou de ne pas s'être laissé imposer un mariage arrangé, ou même parfois d'avoir fréquenté certains amis ou camarades de classe. Un ou plusieurs membres de la famille peuvent croire que le seul moyen d'« essuyer » la honte ou de « laver » l'honneur de la famille et de rétablir sa réputation est de recourir à la violence, telle que l'agression, la séquestration, les menaces, l'incitation au suicide ou le meurtre. La violence liée à « l'honneur » se distingue des autres formes de violence familiale, car elle est souvent commise avec un certain degré d'approbation et/ou de complicité de membres de la famille ou de la communauté. Elle est souvent liée au mariage forcé – comme moyen d'imposer un mariage ou comme punition pour l'avoir refusé.

10. How many "honour" killings occur in Canada?

There is no criminal justice system data on the number of killings committed in the name of so-called "honour" in Canada. A review of reported case law indicates that since 1954, some 20 people have been convicted for first or second degree murder seemingly motivated to save family "honour". Of these killings, 15 occurred in the past decade.

10. Combien de crimes d'« honneur » sont commis au Canada?

Il n'y a aucune donnée du système de justice pénale sur le nombre de meurtres commis au nom du soi-disant « honneur » au Canada. D'après un examen de la jurisprudence publiée, depuis 1954, quelque 20 personnes ont été déclarées coupables de meurtre au premier ou au second degré qui aurait été motivé par un désir de sauver l'« honneur » de la famille. Parmi ces meurtres, 15 ont été commis au cours des dix dernières années.

11. What is female genital mutilation/cutting?

Female genital mutilation/cutting (FGM/C) is when the labia majora, labia minora or clitoris of a girl or woman is excised, infibulated or mutilated, in whole or in part. It is a form of aggravated assault. The *Criminal Code* extends criminal liability to the health practitioner performing the mutilation, the person actively participating in the offence (e.g. by holding the child), the person requesting and encouraging the health practitioner (or another person) to carry out the cutting, and the person removing a child from Canada for the purposes of FGM/C.

According to the Society of Obstetricians and Gynaecologists of Canada (SOGC), FGM/C is usually performed on girls between age 5 and 12. The immediate and long term health risks can be serious and life threatening.

11. Qu'est-ce que la mutilation génitale féminine?

La mutilation génitale féminine (MGF) se produit lorsque les grandes lèvres, les petites lèvres ou le clitoris d'une fille ou d'une femme sont excisés, infibulés ou mutilés, en tout ou partie. Il s'agit d'une forme de voies de fait graves. Les dispositions du *Code criminel* rendent criminellement responsables le professionnel de la santé qui effectue la mutilation, la personne qui participe activement à l'infraction (p. ex. en tenant l'enfant), la personne qui demande au professionnel de la santé (ou à toute autre personne) d'effectuer la mutilation et qui l'encourage à le faire, et la personne qui emmène un enfant à l'étranger en vue de la MGF.

Selon la Société des obstétriciens et gynécologues du Canada (SOGC), la MGF est habituellement pratiquée sur des fillettes âgées entre 5 et 12 ans. Les risques pour la santé, dans l'immédiat et à long terme, peuvent être graves et constituer un danger de mort.

12. Is female genital mutilation/cutting occurring in Canada?

There have been no reported convictions relating to FGM/C under sections 268 or 273.3 of the *Criminal Code*. According to the Society of Obstetricians and Gynaecologists of Canada (SOGC), there is no evidence that any type of FGM/C is practised in Canada. However, there is concern that girls from practising communities may be at risk. According to the Canadian Council of Muslim Women, there is little information about the prevalence of FGM/C being performed in Canada or about girls being removed from Canada to undergo FGM/C. In his presentation before the Standing Committee on Citizenship and Immigration, on 1 April 2014, Mohammad Khan, the President of the Muslim Canadian Congress stated that "[e]ven in Canada some doctors are performing

female genital mutilation.”

12. La mutilation génitale féminine est-elle pratiquée au Canada?

On ne rapporte aucune condamnation pour MGF en vertu de l'article 268 ou 273.3 du *Code criminel*. Selon la SOGC, rien n'indique qu'une quelconque forme de MGF soit pratiquée au Canada. Toutefois, on s'inquiète du fait que les filles appartenant à des communautés qui exercent cette pratique soient à risque. Selon le Conseil canadien des femmes musulmanes, on dispose de peu d'information sur la fréquence des MGF au Canada ou sur les filles qui sont emmenées à l'étranger pour subir une MGF. Lors de son exposé devant le Comité permanent de la citoyenneté et de l'immigration, le 1^{er} avril 2014, Mohammad Khan, le président du Congrès musulman canadien, a déclaré que « [m]ême au Canada, certains médecins pratiquent la mutilation génitale féminine ».

13. Why does this Bill not address measures concerning female genital mutilation/cutting?

No additional amendment is required to the *Criminal Code* to address female genital mutilation/cutting (FGM/C). Section 268 of the *Criminal Code* was amended in 1997 to clarify that FGM/C is a form of aggravated assault. The provision clearly identifies infibulations as a form of FGM/C, therefore re-infibulation following childbirth would also be covered. Section 21 covers parties to an offence including aiding and abetting the commission of an offence. Sections 22 and 464 cover counselling the commission of an offence that was and was not committed. Paragraph 273.3(1)(c) makes it an offence to remove a child (under 18 years of age) from Canada, who is ordinarily resident in Canada, for the purposes of committing FGM/C. As a result, the current *Criminal Code* provisions extend criminal liability to the health practitioner performing the mutilation; the person actively participating in the offence (e.g. by holding the child); the person requesting and encouraging the health practitioner (or another person) to carry out the cutting; and the person removing a child from Canada for the purposes of FGM/C.

Female genital mutilation is already specifically referred to as a consideration in assessing feared harm by refugee claimants in the Women Refugee Claimants Fearing Gender Related Persecution Guideline of the Immigration and Refugee Protection Board.

Further non-legislative measures will be undertaken by federal Departments and Agencies to assist in the prevention of FGM/C and to enhance prosecution efforts. For instance, The Public Health Agency of Canada (PHAC) funds the Family-Centred Maternity and Newborn Care (FCMNC) National Guidelines, which aim to assist health professionals,

policy makers, program planners, administrators and families. Health Canada is using its existing programming to issue guidance for health professionals on the mental and physical health impacts of female genital mutilation and honour-based violence and will increase awareness of the effects of this violence for victims and their children accessing the Public Health Agency of Canada's programs.

13. Pourquoi ce projet de loi ne prévoit-il pas de mesures concernant la mutilation génitale féminine?

Aucune modification supplémentaire au *Code criminel* n'est requise concernant la mutilation génitale féminine (MGF). L'article 268 du *Code criminel* a été modifié en 1997 dans le but de préciser que la MGF est une forme de voies de fait graves. Cette disposition établit clairement que l'infibulation constitue une forme de MGF; par conséquent, la réinfibulation après l'accouchement serait également couverte. L'article 21 porte sur la participation à une infraction, notamment sur le fait d'aider ou d'encourager quelqu'un à commettre une infraction. Les articles 22 et 464 portent sur les personnes qui conseillent à une autre de commettre une infraction, commise ou non. L'alinéa 273.3(1)c) érige en infraction le fait de faire passer à l'étranger un enfant (âgé de moins de 18 ans) résidant habituellement au Canada, dans le but de commettre une MGF. Par conséquent, les dispositions actuelles du *Code criminel* rendent criminellement responsables le professionnel de la santé qui effectue la mutilation, la personne qui participe activement à l'infraction (p. ex. en tenant l'enfant), la personne qui demande au professionnel de la santé (ou à toute autre personne) d'effectuer la mutilation et qui l'encourage à le faire, et la personne qui emmène un enfant à l'étranger en vue de la MGF.

Le mutilation génitale féminine est déjà désignée nommément comme une considération dans l'évaluation des préjudices possibles à l'encontre des revendicatrices du statut de réfugié dans la Directive relative aux revendicatrices du statut de réfugié craignant d'être persécutées en raison de leur sexe de la Commission de l'immigration et du statut de réfugié.

D'autres mesures non législatives seront prises par les ministères et organismes fédéraux afin d'aider à prévenir la MGF et d'améliorer les efforts en matière de poursuites. Par exemple, l'Agence de la santé publique du Canada (ASPC) finance les Lignes directrices nationales sur les soins à la mère et au nouveau-né dans une perspective familiale, qui visent à aider les professionnels de la santé, les décideurs, les planificateurs de programme, les administrateurs et les familles. Santé Canada utilise ses programmes existants pour fournir des directives aux professionnels de la santé sur les incidences mentales et physiques de la mutilation génitale des femmes et de la violence liée à « l'honneur » et

offrira davantage d'information sur les incidences de la violence sur les victimes et leurs enfants qui ont accès aux programmes de l'Agence de la santé publique du Canada.

PART 1: IMMIGRATION AND REFUGEE PROTECTION ACT AMENDMENTS (IRPA)

PARTIE 1 : MODIFICATIONS À LA LOI SUR L'IMMIGRATION ET LA PROTECTION DES RÉFUGIÉS (LIPR)

1. What are the current authorities and tools in place to evaluate and/or refuse visas for applicants in polygamous relationships?

Practising polygamy is an offence under the Canadian *Criminal Code* and polygamous marriages are not recognized as legally valid under Canadian law.

Currently, a temporary resident suspected of practicing polygamy in their country of origin are allowed to enter with one spouse. In the permanent resident stream, a foreign national is permitted to have only one spouse. This requires an individual in a polygamous relationship to convert their marriage to a monogamous relationship or divorce all their spouses and remarry one.

Under the current regime, a criminal conviction or finding of misrepresentation is needed before removal proceedings can take place against a temporary or permanent resident practicing polygamy in Canada.

Currently, temporary residents in polygamous marriages are permitted to enter Canada with one spouse.

1. Quels sont les pouvoirs et instruments actuellement en place pour évaluer ou refuser les visas des demandeurs qui entretiennent des relations polygames?

La pratique de la polygamie constitue une infraction au Canada en vertu du *Code criminel* et les mariages polygames ne sont pas valides en vertu de la loi canadienne.

Actuellement, un résident temporaire soupçonné de pratiquer la polygamie dans son pays d'origine peut entrer au Canada en compagnie d'une seule épouse. Dans le volet des résidents permanents, un étranger ne peut avoir qu'une seule épouse. Ce qui signifie qu'une personne doit convertir son mariage polygame en un mariage monogame ou se divorcer de toutes ses épouses pour n'en remarier qu'une seule.

En vertu du régime actuel, une déclaration de culpabilité ou une conclusion de fausse déclaration est nécessaire avant qu'un processus de renvoi puisse être entamé contre un résident permanent ou temporaire qui pratique la polygamie au Canada.

2. Why is this amendment required?

The creation of a new inadmissibility specifically for polygamy would increase the availability of tools within the immigration program to prevent polygamy in Canada and to take enforcement action as considered appropriate and where evidence is available.

Under the current regime, a criminal conviction or a finding of misrepresentation is needed before removal proceedings can take place against a temporary or permanent resident practising polygamy in Canada.

The new provision provides officers with more tools to prevent polygamy and take enforcement action where evidence comes to light of polygamy being practiced in Canada. For example, a criminal conviction or a finding of misrepresentation will not be needed for removal proceedings to take place. Evidence that a temporary or permanent resident is practicing polygamy in Canada would be sufficient to refer the individual to the Immigration and Refugee Board of Canada for an admissibility hearing. The permanent resident or foreign national could be found inadmissible *on that basis alone* without requiring a finding that the person misrepresented their situation or has a criminal conviction. The person would then be subject to removal proceedings.

Currently, temporary residents who are practising polygamy abroad are permitted to enter Canada with one of their spouses the new provision will require that they travel alone without any spouse. Travelling even with one spouse who is part of the polygamous marriage will be considered to be practising polygamy, so the new inadmissibility will make it possible for officers to enforce Canadian law and prevent even visitors from practising polygamy in Canada.

2. Pourquoi cette modification est-elle requise?

La création d'une nouvelle interdiction visant précisément la polygamie permettrait d'accroître la disponibilité des outils au sein du programme d'immigration qui permettent de prévenir la polygamie au Canada et de prendre les mesures d'exécution de la loi qui s'imposent, au besoin et lorsque des éléments de preuve sont disponibles.

Sous le régime actuel, une condamnation criminelle ou une conclusion relative à une fausse déclaration est requise avant qu'une mesure de renvoi puisse être prise à l'égard d'un résident temporaire ou permanent pratiquant la polygamie au Canada.

La nouvelle disposition offre aux agents plus d'outils pour prévenir la polygamie et prendre des mesures d'exécution de la loi lorsque des éléments de preuve démontrent que la polygamie est pratiquée au Canada. Par exemple, une déclaration de culpabilité ou une

conclusion de fausse déclaration ne sera pas nécessaire pour entamer un processus de renvoi. La preuve qu'un résident temporaire ou permanent pratique la polygamie au Canada suffirait à renvoyer la personne devant la Commission de l'immigration et de la protection des réfugiés pour subir une enquête. Ce motif serait suffisant en soi pour que le résident permanent ou l'étranger soit considéré interdit de territoire sans qu'il soit nécessaire de conclure qu'il a fait de fausses déclarations ou qu'il est visé par une condamnation criminelle. La personne serait alors assujettie à une mesure de renvoi.

Actuellement, les résidents temporaires qui pratiquent la polygamie à l'étranger peuvent entrer au Canada accompagnés de l'un de leurs époux – la nouvelle disposition exigera que la personne voyage seule, sans époux. La personne voyageant accompagnée d'un des époux du mariage polygame sera considérée comme pratiquant la polygamie; ainsi, la nouvelle interdiction de territoire permettra aux agents d'exécuter la loi canadienne et d'empêcher même les visiteurs de pratiquer la polygamie au Canada.

3. Why has polygamy not been prosecuted lately in Canada?

Under the Canadian Constitution, the federal Parliament has jurisdiction over the criminal law, but it is the provinces that have jurisdiction over the administration of justice, including prosecutions. In Canada, there have been only two reported convictions for practising polygamy under the *Criminal Code*, one in 1899 and the other in 1907. In 2011, the British Columbia Supreme Court ruled that the *Criminal Code* ban on the practice of polygamy is consistent with the *Canadian Charter of Rights and Freedoms* (although they also found that it could not be applied to criminalize the actions of minors, who cannot be liable to prosecution until they turn 18). On August 13, 2014, charges were laid in B.C. by Special Prosecutor Peter Wilson, against four individuals from the polygamous community in Bountiful. Winston Blackmore and Blackmore's brother-in-law James Oler have been charged with practising polygamy, and Winston Blackmore's brother Brandon Blackmore and sister-in-law Emily Crossfield have been charged for unlawfully removing a child from Canada. Media reports indicate that charges have also been laid in Ontario, although the outcome of that case is unknown.

3. Pourquoi la polygamie n'a-t-elle pas fait l'objet de poursuites au Canada dernièrement?

En vertu de la *Constitution canadienne*, le Parlement fédéral a compétence sur le droit pénal, mais ce sont les provinces qui ont compétence sur l'administration de la justice, notamment les poursuites. Au Canada, il y a eu seulement deux condamnations pour avoir pratiqué la polygamie en vertu du *Code criminel*, une en 1899 et l'autre en 1907. En 2011, la Cour suprême de la Colombie-Britannique a statué que l'interdiction prévue au *Code criminel* quant à la pratique de la polygamie est conforme à la *Charte canadienne des droits*

et libertés (même si elle a aussi statué qu'il ne pouvait pas être appliqué pour criminaliser les acteurs de personnes mineures, qui ne peuvent pas faire l'objet de poursuites avant d'avoir atteint l'âge de 18 ans). Le 13 août 2014, des accusations ont été portées en C.-B. par le procureur spécial Peter Wilson contre quatre personnes de la communauté de polygames à Bountiful. Winston Blackmore et son beau-frère, James Oler, ont été accusés de pratiquer la polygamie, et le frère et la belle-sœur de Winston Blackmore, Brandon Blackmore et Emily Crossfield, ont été accusés d'avoir déplacé illégalement un enfant hors du Canada. Les reportages des médias indiquent que des accusations ont aussi été portées en Ontario, bien que les conclusions de ce cas soient inconnues.

4. What would happen if one of the spouses is a Canadian citizen? What if the other spouse is a permanent resident or temporary resident?

The new inadmissibility applies to both foreign nationals and permanent residents. A principal applicant and spouse could be both refused a visa or if in Canada, both would be subject to enforcement proceedings. In the case where one spouse is Canadian, the non-Canadian spouse would be inadmissible and could not enter or remain in Canada.

In Canada, citizens and non-citizens could be prosecuted for practising polygamy.

4. Que se produirait-il si l'un des époux est un citoyen canadien et que l'autre est un résident permanent ou temporaire?

La nouvelle interdiction de territoire s'applique autant aux étrangers qu'aux résidents permanents. Un demandeur principal et son époux/se pourraient tous deux se voir refuser la délivrance d'un visa ou, s'ils sont au Canada, pourraient tous deux faire l'objet de procédures d'exécution de la loi. Dans un cas où un des époux est Canadien, l'époux qui n'est pas Canadien serait interdit de territoire et ne pourrait pas entrer au Canada ni y demeurer.

Au Canada, les citoyens et les non-citoyens pourraient être poursuivis pour avoir pratiqué la polygamie.

5. How will the new inadmissibility apply to foreign nationals or permanent residents who have been authorized to enter Canada?

The new provision would apply to all foreign nationals and permanent residents once the provision comes into force. This would mean that, for example, two foreign nationals who have previously been admitted to Canada would be inadmissible if the relationship was polygamous. One spouse would have to leave Canada and could not visit the foreign

national in Canada as the physical presence of a foreign national with any of their spouses in Canada would be considered to be practising polygamy in Canada.

5. Comment la nouvelle interdiction s'appliquera-t-elle aux étrangers ou aux résidents permanents à qui on a autorisé l'entrée au Canada?

La nouvelle disposition s'appliquerait à tous les étrangers et aux résidents permanents une fois entrée en vigueur. Cela signifierait, par exemple, que deux étrangers ayant préalablement été admis au Canada seraient interdits de territoire s'ils ont une relation polygame. Un des époux serait obligé de quitter le Canada et ne pourrait pas rendre visite à l'autre étranger au Canada puisque la présence physique d'un étranger avec n'importe quel de ses époux au Canada serait considérée comme constituant la pratique de la polygamie au Canada.

6. How will the new inadmissibility impact children's admissibility?

In the permanent stream, accompanying dependent children (as the children of polygamous parents) may be found inadmissible for being the family member of an inadmissible person. According to the legislative amendments concerning inadmissible family members made pursuant to the *Faster Removal of Foreign Criminals Act*, a dependent child in the temporary stream would not be inadmissible if their parent is found inadmissible under this provision. However, officers may look at *bona fides* for the child if parents are refused for practising polygamy.

6. Quelle incidence aura la nouvelle interdiction sur l'admissibilité des enfants?

Dans le cadre du volet permanent, les enfants à charge qui accompagnent les adultes (comme les enfants de parents polygames) pourraient être interdits de territoire parce qu'ils sont membres de la famille d'une personne interdite de territoire. Selon les modifications législatives apportées à la *Loi accélérant le renvoi des criminels étrangers* portant sur l'interdiction de territoire des membres de la famille, les enfants à charge dans le cadre du volet temporaire ne seraient pas interdits de territoire. Toutefois, les agents pourraient examiner la question de la bonne foi à l'égard de l'enfant si les parents se voient refuser l'entrée pour des motifs liés à la pratique de la polygamie.

7. Why is it considered to be practising polygamy if only two persons are in Canada (as opposed to three or more of the spouses being in Canada)?

Following the British Columbia Supreme Court decision in 2011, Citizenship and Immigration Canada worked closely with the Department of Justice to review the

immigration policy related to the practice of polygamy. This work led to the introduction of additional immigration measures to prevent the practice of polygamy from occurring in Canada and to take appropriate action when evidence comes to light.

A polygamous marriage – i.e. one where there are three or more spouses – is not legally valid in Canada and all the members of the marriage are considered to be practising polygamy. The marriages remain polygamous in law, regardless of whether the spouses live under the same roof, in different houses in the same community, or at some distance from one another, even in different jurisdictions.

Permitting two polygamous spouses to enter Canada together would be considered inconsistent with Canadian criminal and marriage law. By leaving all but one spouse across the border, individuals will still be considered to be practising polygamy in Canada and could be subject to criminal prosecution.

7. Pourquoi considère-t-on que des personnes pratiquent la polygamie, si seulement deux d'entre elles se trouvent au Canada (par opposition à si trois époux ou plus se trouvaient au Canada)?

À la suite de la décision prise par la Cour suprême de la Colombie-Britannique en 2011, Citoyenneté et Immigration Canada a travaillé en étroite collaboration avec le ministère de la Justice pour passer en revue les politiques en matière d'immigration liées à la pratique de la polygamie. Ces travaux ont mené à la mise en place d'autres mesures d'immigration qui préviennent la pratique de la polygamie au Canada et qui permettent la prise de mesures adéquates lorsque des éléments probants sont découverts.

Un mariage polygame, c.-à-d. qui compte trois époux ou plus, n'est pas légal au Canada, et on considère que tous les membres de l'union pratiquent la polygamie. Les mariages demeurent polygames au sens de la loi, que les épouses vivent sous le même toit, dans des maisons différentes au sein de la même collectivité, ou dans des endroits à une certaine distance l'une de l'autre, voire même dans des territoires différents.

Le fait de permettre à des époux polygames d'entrer au Canada serait incompatible avec le droit pénal et la législation matrimoniale du Canada. Malgré l'absence des autres époux, on considérerait quand même que les deux personnes qui ont franchi la frontière pratiquent la polygamie au Canada, et celles-ci pourraient faire l'objet de poursuites judiciaires.

8. Would the new provision on polygamy have done anything to avoid the tragic events of the Shafia case?

We are unable to speculate on individual cases. The legislative amendments proposed in the bill would enhance the existing immigration tools by creating a new inadmissibility specifically for polygamy to prevent non-citizens from coming to Canada to practice polygamy and, where evidence is available, provide the tools to take enforcement action inside Canada where appropriate. The Government is always working to provide better tools to those on the ground to protect victims of barbaric cultural practices.

8. La nouvelle disposition relative à la polygamie aurait-elle permis d'éviter les événements tragiques dans le cas de la famille Shafia?

Nous ne pouvons pas émettre d'hypothèses concernant des cas individuels. Les modifications législatives proposées dans le projet de loi renforceraient les outils actuels de l'immigration en créant une nouvelle interdiction de territoire visant particulièrement la polygamie pour empêcher des non-citoyens de venir au Canada pour exercer la polygamie et, dans les cas où il existe des données probantes, elles fourniraient les outils nécessaires pour prendre des mesures d'exécution de la loi au Canada, au besoin. Le gouvernement s'emploie sans cesse à trouver de meilleurs outils pour les personnes sur le terrain afin de protéger les victimes de pratiques culturelles barbares.

ENFORCEMENT

EXÉCUTION DE LA LOI

9. How will CIC or CBSA identify cases of polygamy?

Officers receive guidance and training in cases of amendments to IRPA and/or IRPR. While administrative measures to assist officers to identify cases involving polygamy and deal appropriately with them will be introduced, detecting polygamy cases could remain difficult in some situations. However, this new provision provides officers with tools to address cases where evidence comes to light.

Referrals of alleged polygamy cases will be triaged in line with existing enforcement priorities.

9. Comment les agents de CIC et de l'ASFC ciblent-ils les cas de polygamie?

Les agents reçoivent des directives et une formation lorsque des modifications sont apportées à la LIPR ou au RIPR. Bien que des mesures administratives pour aider les agents à cibler les cas de polygamie et à les traiter de façon adéquate seront mises en place, dans certaines circonstances, il pourrait être difficile de détecter les cas de polygamie. Toutefois, cette nouvelle disposition permet d'outiller les agents afin qu'ils puissent mieux traiter les cas où des preuves de polygamie seraient produites.

Les cas présumés de polygamie faisant l'objet d'un renvoi seront triés conformément aux priorités d'application de la loi actuelles.

10. How will the new provision on practising polygamy be enforced?

This new inadmissibility will allow CIC to deny visas when they believe the applicant will be practising polygamy in Canada on that basis alone. In order to advise potential travellers, CIC's website will be updated to inform applicants about the new inadmissibility for practising polygamy in Canada. CIC will also ask visa applicants to declare multiple spouses.

Where information comes to light after the person has entered Canada, the person could be reported and referred to the Immigration Division of the Immigration and Refugee Board of Canada for an admissibility hearing. Referrals of alleged inadmissibility for practising polygamy will be triaged in line with existing enforcement priorities.

10. De quelle façon la nouvelle disposition relative à la pratique de la polygamie sera-t-elle appliquée?

Cette nouvelle interdiction de territoire permettra à CIC de refuser de délivrer un visa quand il croit que le demandeur pratiquera la polygamie au Canada et ce motif seul suffira. Pour en aviser les voyageurs potentiels, CIC mettra à jour son site Web pour informer les demandeurs au sujet de la nouvelle interdiction de territoire pour pratique de la polygamie au Canada. CIC demandera également aux demandeurs de visa de déclarer s'ils ont plusieurs époux.

Si de tels renseignements venaient à être révélés après l'entrée de la personne au Canada, cette personne pourrait être signalée à la Section de l'immigration de la Commission de l'immigration et du statut de réfugié du Canada, et son cas serait transmis à cette dernière

aux fins d'enquête. Les cas transmis de présumée interdiction de territoire pour exercice de la polygamie seront triés conformément aux priorités actuelles en matière d'exécution de la loi.

11. Will officers ask applicants if they practise polygamy? Will this slow down processing of visas and border operations?

When the provision is implemented, visa applicants will be asked to declare multiple spouses at the time they apply for a visa outside Canada. Border Officers would not be expected to routinely question travellers on their marital status. As is the case today, officers will continue to be guided by operational policies and procedures while exercising their judgment in accordance with the law as they examine travellers seeking entry to Canada.

Even with the proposed changes, detecting polygamy cases where a person misrepresents their situation will be difficult. Immigration officers, however, are trained to look for and assess non-bona fide relationships and determine whether an applicant is admissible to Canada.

11. Les agents demanderont-ils aux demandeurs s'ils pratiquent la polygamie? Est-ce que ceci ralentira les délais de traitement des visas et les opérations frontalières?

Après la mise en œuvre de la disposition, les demandeurs de visa devront déclarer s'ils ont plusieurs époux à la présentation d'une demande de visa à l'extérieur du Canada. On ne s'attendrait pas à ce que les agents frontaliers interrogent systématiquement tous les voyageurs concernant leur état matrimonial. Comme c'est le cas en ce moment, les agents continueront d'être orientés par des politiques et des procédures opérationnelles, tout en faisant preuve de jugement conformément à la loi lorsqu'ils examinent les voyageurs qui cherchent à entrer au Canada.

Malgré les modifications proposées, il sera difficile de déceler les cas de polygamie lorsqu'une personne fait de fausses déclarations au sujet de sa situation. Cependant, les agents d'immigration sont formés pour détecter et évaluer les relations de mauvaise foi et déterminer si un demandeur est admissible au Canada.

12. What if an applicant does not disclose information about their number of spouses?

Applicants are required to be truthful when completing their application. Detecting cases where an individual does not disclose that they are practising polygamy will be

challenging. However, during processing, officers may find evidence to reveal a polygamous relationship. Where evidence comes to light that an applicant has withheld facts relevant to the processing of his/her application, a finding of inadmissibility for misrepresentation could be made as opposed to, or in addition to, the inadmissibility for practising polygamy.

12. Qu'advient-il si un demandeur ne communique pas le nombre d'époux qu'il a?

Les demandeurs doivent remplir leur demande en toute honnêteté. Il sera difficile de déceler les cas où une personne ne divulgue pas qu'elle pratique la polygamie. Cependant, pendant le traitement, les agents peuvent trouver des éléments probants qui indiquent une relation polygame. Si des preuves indiquent qu'un demandeur a dissimulé des faits essentiels au traitement de sa demande, cette personne pourrait être réputée interdite de territoire pour fausses déclarations plutôt que pour pratique de la polygamie, ou en plus de cette dernière interdiction de territoire.

13. Can sister-wives travelling together enter Canada?

A polygamous marriage – i.e. one where there are three or more spouses – is not legally valid in Canada and all the members of the marriage are considered to be practising polygamy. The marriages remain polygamous in law, regardless of whether the wives live under the same roof, in different houses in the same community, or at some distance from one another, even in different jurisdictions.

13. Est-ce que des sœurs-épouses qui voyagent ensemble peuvent entrer au Canada?

Un mariage polygame, c.-à-d. qui compte trois époux ou plus, n'est pas légal au Canada, et on considère que tous les membres de l'union pratiquent la polygamie. Les mariages demeurent polygames au sens de la loi, que les épouses vivent sous le même toit, dans des maisons différentes au sein de la même collectivité, ou dans des endroits à une certaine distance l'une de l'autre, voire même dans des territoires différents.

14. Are officers required to pursue enforcement and seek removal in all cases where they encounter a person who may be inadmissible under the new polygamy inadmissibility?

Under section 44 of the Immigration and Refugee Protection Act, officers and Minister's Delegates have limited discretion on whether or not to prepare an inadmissibility report and

on whether or not to refer this report to the Immigration Division of the Immigration and Refugee Board for a finding of inadmissibility and the issuance of a removal order.

14. Les agents doivent-ils prendre des mesures d'exécution à l'égard d'une personne et demander le renvoi de celle-ci dans tous les cas où une personne pourrait être interdite de territoire en vertu de la nouvelle interdiction liée à la polygamie?

En vertu de l'article 44 de la *Loi sur l'immigration et la protection des réfugiés*, les agents et délégués du ministre ont un pouvoir discrétionnaire limité pour ce qui est de préparer ou non un rapport d'interdiction de territoire et de transmettre ou non ce rapport à la Section de l'immigration de la Commission de l'immigration et du statut de réfugié en vue d'une déclaration d'interdiction de territoire et de la délivrance d'une mesure de renvoi.

15. Will the government be initiating enforcement action on Bountiful cases?

We are unable to speak to individual cases. All foreign nationals and permanent residents are subject to the inadmissibility provisions in the *Immigration and Refugee Protection Act*.

15. Le gouvernement prendra-t-il des mesures d'exécution de la loi à l'égard de cas de Bountiful?

Nous ne sommes pas en mesure de parler de cas individuels. Tous les étrangers et les résidents permanents sont visés par les dispositions relatives à l'interdiction de territoire dans la *Loi sur l'immigration et la protection des réfugiés*.

RELIEF MECHANISMS

MÉCANISMES D'EXCEPTION

16. If a person takes steps to end their practice of polygamy by divorcing their spouse, would they still be considered inadmissible?

A person who ceases to practise polygamy, either by divorcing all spouses but the first, or by divorcing all spouses and re-marrying one, would no longer be inadmissible.

16. Si une personne prend des mesures pour mettre fin à sa relation polygame en divorçant ses époux, serait-elle encore considérée interdite de territoire?

Une personne qui met fin à la pratique de la polygamie, soit en divorçant tous les époux sauf le premier ou en divorçant tous les époux et en mariant de nouveau une seule personne, ne serait plus considérée interdite de territoire.

17. Can the individual file an appeal?

These amendments will not restrict otherwise available appeal rights to the Immigration Appeal Division and judicial review would remain available to both temporary residents and permanent residents.

17. Est-ce que la personne peut interjeter appel de la décision?

Ces modifications ne limiteront pas les droits d'appel disponibles devant la Section d'appel de l'immigration, et les résidents temporaires et permanents pourraient encore présenter des demandes de contestation judiciaire.

18. In general, what tools do we have to overcome inadmissibility?

Individuals who are inadmissible may receive a temporary resident permit (TRP) and be permitted to enter Canada. Although designated officers will continue to have the authority in the *Immigration and Refugee Protection Act* to allow entry by issuing TRPs where justified in the circumstances, it would be rare that these mechanisms would be used, as officers would have to take into consideration that the individual would be practising polygamy on Canadian soil and could be subject to criminal prosecution.

In addition, foreign nationals may be exempted from applicable criteria if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations. Again, the violation of Canadian criminal law would have to be taken into consideration.

18. De façon générale, de quels outils dispose-t-on pour passer outre à une interdiction de territoire?

Les personnes interdites de territoire pourraient obtenir un permis de séjour temporaire (PST) et avoir la permission d'entrer au Canada. Bien que certains agents désignés continueront d'avoir le pouvoir, en vertu de la *Loi sur l'immigration et la protection des réfugiés*, d'autoriser l'entrée à ces personnes en délivrant des PST lorsque les circonstances le justifient, ces mécanismes ne seraient utilisés que très rarement, puisque les agents seraient tenus de prendre en considération le fait que la personne pratique la polygamie en sol canadien et pourrait faire l'objet de poursuites criminelles à cet égard.

De plus, les étrangers pourraient être dispensés des critères applicables si le ministre est d'avis que des motifs d'ordre humanitaire le justifient. Encore une fois, la violation du droit pénal canadien devrait être prise en compte.

19. What is the process for applying for a temporary resident permit (TRP)?

Citizens of visa-exempt countries should contact the visa office responsible for their country or region. Otherwise, applicants may submit an application for a temporary resident visa along with supporting documents to explain why they are inadmissible and why it may be justified to allow their entry to Canada.

There is no formal TRP application process at ports of entry. A border services officer at CBSA's Immigration Secondary has discretion to issue a TRP on a case-by-case basis only when the border services officer is of the opinion that entry to Canada is justified in the circumstances. That is, the benefits of allowing the foreign national to enter Canada (e.g., economic benefit, humanitarian and compassionate reasons) are sufficiently compelling to clearly outweigh any risk that the foreign national may pose to Canadian society (i.e. that they are violating the criminal law).

19. Quel est le processus de demande de permis de séjour temporaire (PST)?

Les citoyens de pays dispensés de l'obligation de visa doivent communiquer avec le bureau des visas responsable de leur pays ou de leur région. Autrement, les demandeurs peuvent présenter une demande de visa de résident temporaire, accompagnée des documents justificatifs expliquant pourquoi ils sont interdits de territoire et quelles sont les raisons pouvant justifier leur entrée au Canada.

Il n'existe pas de processus officiel de demande de PST aux points d'entrée. L'agent des services frontaliers responsable du contrôle secondaire de l'immigration a le pouvoir discrétionnaire de délivrer un PST, au cas par cas, seulement lorsqu'il estime que l'entrée au Canada est justifiée dans les circonstances, c'est-à-dire que les avantages d'autoriser l'étranger à entrer au Canada (p. ex. avantage économique, motifs d'ordre humanitaire) sont suffisamment importants pour l'emporter nettement sur les risques que l'étranger peut poser pour la société canadienne (c.-à-d. qu'il viole le droit criminel).

INTERNATIONAL PRACTICES AND BILATERAL IRRITANTS

LES PRATIQUES INTERNATIONALES ET IRRITANTS BILATÉRAUX

20. To what extent is polygamy practised around the world today? In how many countries are polygamous unions lawfully recognized?

Polygamous marriages are recognized in about 62 countries, primarily in countries of the Middle East and Africa.

However, the extent to which polygamy is actively practiced in these countries varies significantly. Some countries such as Saudi Arabia and Ghana have rates of polygamy that are less than one-third of marriages (18.8% and 29% respectively¹); in others such as Jordan and Malaysia, it is significantly lower still (6.8% and less than 6% respectively²).

While there may be a perception that polygamy is allowed predominantly in countries where the Muslim population makes up the majority, there are such countries, like Turkey and Tunisia, that do not permit polygamy. Some countries that are predominantly Christian do permit polygamy, such as the Republic of the Congo, Uganda and Zambia. In some countries, such as in India and Sri Lanka, polygamous marriages are allowed only amongst Muslim citizens.

Polygamy is also practiced in the United States, and cases do exist in Canada, such as in Bountiful, B.C.

20. À l'heure actuelle, dans quelle mesure la polygamie est-elle pratiquée dans le monde? Dans combien de pays les unions polygames sont-elles reconnues par la loi?

Les mariages polygames sont reconnus dans environ 62 pays, principalement dans les pays du Moyen-Orient et de l'Afrique.

Cependant, la mesure dans laquelle la polygamie est activement exercée dans ces pays varie considérablement. Certains pays, comme l'Arabie saoudite et le Ghana, présentent des taux de polygamie qui comptent pour moins d'un tiers des mariages (soit 18,8 % et

¹ Bailey, Martha and Kaufman, Amy J., *Polygamy in the Monogamous World: Multicultural Challenges for Western Law and Policy* (California: Praeger, 2010), pages 41 (Saudi Arabia) and 16 (Ghana).

² Bailey, Martha and Kaufman, Amy J., *Polygamy in the Monogamous World: Multicultural Challenges for Western Law and Policy* (California: Praeger, 2010), pages 48 (Jordan) and 61 (Malaysia)

29 % respectivement³); dans d'autres pays, comme la Jordanie et la Malaisie, ils sont considérablement inférieurs (soit 6,8 % et moins de 6 % respectivement⁴).

Bien que certains croient que la polygamie est permise principalement dans les pays où la population musulmane est majoritaire, il existe des pays, comme la Turquie et la Tunisie, qui n'autorisent pas la polygamie. Certains pays dont la population est majoritairement chrétienne permettent la polygamie, comme la République du Congo, l'Ouganda et la Zambie. Dans certains pays, comme l'Inde et le Sri Lanka, les mariages polygames sont autorisés seulement parmi les citoyens musulmans.

La polygamie est également pratiquée aux États-Unis et des cas existent au Canada, comme à Bountiful, en Colombie-Britannique.

21. What about bigamy cases in the Philippines where divorce is not legal? Would these unions be considered polygamy?

No. For applicants from countries such as the Philippines where a divorce cannot be obtained, an officer would assess the case to determine whether any subsequent common-law relationship is *bona fide* and whether the applicant has taken steps to end the previous marital relationship, such as by separation. The applicant is not penalized in these specific cases.

21. Qu'en est-il des cas de bigamie aux Philippines, pays où le divorce n'est pas légal? Ces unions seraient-elles considérées comme polygames?

Non. En ce qui concerne les demandeurs venant de pays, comme les Philippines, où il n'est pas possible d'obtenir un divorce, l'agent évaluerait le cas pour déterminer si l'union de fait subséquente est *de bonne foi* et si le demandeur a pris les mesures nécessaires pour mettre fin à la relation conjugale précédente, notamment à l'aide d'une séparation. Le demandeur ne serait pas pénalisé dans ces cas particuliers.

22. How do the practices of our Five Country Conference partner countries compare with the practices proposed in the new inadmissibility provision?

3 BAILEY, Martha et KAUFMAN, Amy J. *Polygamy in the Monogamous World: Multicultural Challenges for Western Law and Policy* (Californie : Praeger, 2010), pages 41 (Arabie saoudite) et 16 (Ghana).

4 BAILEY, Martha et KAUFMAN, Amy J. *Polygamy in the Monogamous World: Multicultural Challenges for Western Law and Policy* (Californie : Praeger, 2010), pages 48 (Jordanie) et 61 (Malaisie).

Canada's proposed approach is similar to other likeminded countries. In the United States (US), the United Kingdom (UK), Australia and New Zealand, foreign nationals seeking to immigrate, who intend to practise polygamy when they enter, are considered inadmissible. Only the first spouse may qualify as a spouse for immigration purposes.

22. En quoi les pratiques de nos partenaires de la Conférence des cinq nations sont-elles comparables à la pratique proposée dans la nouvelle disposition sur l'interdiction de territoire?

L'approche du Canada est similaire à celle de pays aux vues communes. Aux États-Unis, (É.-U.), au Royaume-Uni (R.-U.), en Australie et en Nouvelle-Zélande, les étrangers qui veulent immigrer et qui ont l'intention de pratiquer la polygamie une fois au pays sont jugés interdits de territoire. Seule le premier époux peut être admissible à titre d'époux aux fins de l'immigration. Les É.-U, le R.-U et la Nouvelle-Zélande appliquent généralement l'approche selon laquelle une personne doit avoir deux époux présents au pays pour être interdite de territoire.

23. Will this amendment affect bilateral relationships?

We require that all visitors respect Canadian laws when they are on Canadian soil. This will not affect polygamous individuals who are travelling to Canada alone. Under the proposed inadmissibility provision, individuals who are practising polygamy in their country of origin where it is legal would be eligible for temporary resident status (including visitors, foreign workers, and students) provided they are travelling unaccompanied by a spouse. If such individuals come with even one of their spouses they are considered to be practising polygamy on Canadian soil. In certain cases, a special permit may exempt a person from the inadmissibility provisions for a temporary purpose when it is justified in the circumstances, although they would still be subject to the criminal law.

23. Cette modification influera-t-elle sur les relations bilatérales?

Nous exigeons que tous les visiteurs respectent les lois canadiennes lorsqu'ils sont en sol canadien. La modification n'aura aucune incidence sur les personnes polygames qui voyagent seules au Canada. Aux termes des dispositions d'inadmissibilité proposées, les personnes qui pratiquent la polygamie dans leur pays d'origine, où elle est autorisée, seraient admissibles au statut de résident temporaire (y compris les visiteurs, les travailleurs étrangers et les étudiants), pourvu qu'ils voyagent sans être accompagnés d'une épouse. Si une personne polygame arrive avec une seule de ses épouses, elle sera considérée comme

pratiquant la polygamie en sol canadien. Dans certains cas, un permis spécial pourra exempter une personne des dispositions d'inadmissibilité pour un besoin temporaire lorsque les circonstances le justifient, mais la personne demeurera assujettie à la loi criminelle.

24. Does this amendment conflict with Canada's obligations under the *Foreign Missions and International Organizations Act* (FMIOA)?

The IRPA is administered in a manner consistent with Canada's treaty obligations, as incorporated in the *Foreign Missions and International Organizations Act* (FMIOA) and related Orders in Council. The FMIOA s. 5(4) exempts accredited foreign officials from the inadmissibility provisions of the IRPA if they are travelling to Canada pursuant to an order made under the FMIOA Regulations, for a purpose specified in the order. Spouses are also covered by the exemption. There is not, however, an exemption from the criminal law with regard to conduct outside of their diplomatic duties.

24. Est-ce que cette modification entre en conflit avec les obligations du Canada aux termes de la *Loi sur les missions étrangères et les organisations internationales* (LMEOI)?

La LIPR est administrée de manière à respecter les obligations du Canada découlant de traités, comme le prévoient la *Loi sur les missions étrangères et les organisations internationales* (LMEOI) et les décrets connexes. Le paragraphe 5(4) de la LMEOI exempte les agents étrangers accrédités des dispositions d'inadmissibilité de la LIPR s'ils voyagent au Canada conformément à un décret pris en vertu de la réglementation afférente à la LMEOI et dans un but précisé dans le décret. Les épouses seraient aussi couvertes par l'exemption. Il n'y a toutefois aucune exemption à la loi criminelle pour ce qui est de leur conduite en dehors de leurs fonctions diplomatiques.

25. Some foreign leaders have multiple wives. Would they be allowed entry into Canada?

All visa applicants are subject to the inadmissibility provisions in the *Immigration and Refugee Protection Act* and their applications are assessed on an individual basis.

25. , Certains dirigeants étrangers ont plusieurs épouses. Seraient-ils autorisés à entrer au Canada?

Tous les demandeurs de visa sont visés par les dispositions relatives à l'interdiction de territoire prévues dans la *Loi sur l'immigration et la protection des réfugiés*, et leur demande est évaluée au cas par cas. =

MISCELLANEOUS

AUTRES

26. When will this new inadmissibility provision come into force?

Amendments to the *Immigration and Refugee Protection Act* and the regulatory amendments supporting the implementation of the new provision will come into force on a day to be fixed by order of the Governor in Council.

26. Quand cette nouvelle disposition relative à l'interdiction de territoire entrera-t-elle en vigueur?

Les modifications à la *Loi sur l'immigration et la protection des réfugiés* et les modifications réglementaires appuyant la mise en œuvre de la nouvelle disposition entreront en vigueur à une date fixée par décret.

27. What is the standard of proof required to find a person inadmissible?

This new inadmissibility will be decided on the basis of a balance of probabilities threshold, which is the civil standard that also applies to other inadmissibility grounds found in sections 40-42 of the IRPA.

27. Quelle est la norme de preuve requise pour déterminer qu'une personne est interdite de territoire?

Les décisions relatives à cette nouvelle interdiction de territoire seront prises sur la base du seuil de prépondérance des probabilités, qui constitue la norme civile qui s'applique également aux autres motifs d'interdiction de territoire énoncées aux articles 40 à 42 de la LIPR.

28. What measures in this bill will affect refugees and protected persons?

Current processes related to our international obligations regarding the treatment of refugee claimants will not be affected by this bill.

For in-Canada asylum claimants, an inadmissibility on the grounds of practising polygamy will not render a claim ineligible to be referred to the Immigration and Refugee Board.

Resettled refugee cases are assessed by CIC officers against the requirements of IRPA, including monogamous marriage requirements.

28. Quelles mesures de ce projet de loi toucheront les réfugiés et les personnes protégées?

Les processus actuels visant nos obligations internationales concernant le traitement des demandes d'asile ne seront pas touchés par ce projet de loi.

Pour ce qui est des demandeurs d'asile au Canada, une interdiction de territoire pour pratique de la polygamie n'empêchera pas une demande de pouvoir être déférée à la Commission de l'immigration et du statut de réfugié. Les cas de réfugiés réinstallés sont évalués par les agents de CIC en fonction des exigences de la LIPR, notamment les exigences concernant le mariage monogame.

29. Is the fact that some provincial family laws recognize polygamous marriages inconsistent with the creation of this new inadmissibility regarding polygamy?

No. Many provincial family laws include polygamous marriages in order to protect women by ensuring that their "spouse" cannot avoid making support payments, sharing marital property and other consequences if their relationship breaks down. This is a completely different legal purpose which ensures equal access to private law (i.e. the relationship between individuals) obligations between the couple.

With regard to recognition by governments in public law (i.e. the relationship between individuals and the state), however, the new ground of inadmissibility is entirely consistent with the approach already in the *Criminal Code* and reflected in all other federal and provincial legislation, which does not recognize polygamous marriages, for example, for pension survivor benefits or income tax credits. The federal government's proposed immigration law, which will strengthen the availability of tools within the immigration program to prevent polygamy and to take enforcement action against foreign nationals and permanent residents as appropriate and where evidence is available, builds on the current Canadian public law ban on polygamy.

29. Le fait que certaines lois provinciales sur la famille reconnaissent le mariage polygame est-il non conforme à la création de cette nouvelle interdiction de territoire liée à la polygamie?

Non. De nombreuses lois provinciales sur la famille incluent le mariage polygame afin de protéger les femmes en s'assurant que leur « époux » ne puisse éviter de verser une pension alimentaire, de partager les biens matrimoniaux et d'autres conséquences en cas de rupture de la relation. L'objectif juridique est entièrement différent; il garantit aux membres du couple un accès égal aux obligations en vertu du droit privé (c.-à-d. la relation entre les personnes).

En ce qui a trait à la reconnaissance par les gouvernements en vertu du droit public (c.-à-d. la relation entre les particuliers et l'État), cependant, le nouveau motif d'interdiction de territoire est tout à fait conforme à l'approche adoptée dans le *Code criminel* et reflétée dans toutes les autres lois fédérales et provinciales qui ne reconnaissent pas le mariage polygame, par exemple, aux fins des prestations au survivant du régime de pensions ou aux fins des crédits d'impôt. Les dispositions législatives en matière d'immigration proposées par le gouvernement fédéral, qui renforceront la disponibilité des outils au sein du programme d'immigration permettant de prévenir la polygamie et de prendre des mesures d'application de la loi à l'encontre d'étrangers et de résidents permanents, au besoin et lorsqu'il existe des preuves, s'appuient sur l'interdiction de la polygamie en vertu du droit public canadien.

30. What is the government doing to address concerns raised by stakeholders who say that the conditional permanent residency provision for sponsored spouses is preventing women from leaving abusive relationships out of fear of losing their status in Canada?

The Government of Canada is concerned about and sensitive to the issue of family violence.

In consultation with various groups with expertise in this area, CIC has developed a clear, straightforward process that allows newly sponsored spouses impacted by the conditional permanent residence measure, who are victims of abuse or neglect, to come forward without having to worry that they might face enforcement action.

Guidelines have also been developed to assist officers in processing requests for exceptions based on abuse or neglect and in handling sensitive information related to them. This straightforward process allows legitimate spouses in abusive situations to come forward without fear of jeopardizing their permanent residence status in Canada.

30. Que fait le gouvernement pour répondre aux préoccupations soulevées par des intervenants, qui affirment que la disposition relative à la résidence permanente conditionnelle visant les époux parrainés empêche les femmes de sortir d'une relation dans laquelle elles sont victimes de mauvais traitements, de peur de perdre leur statut au Canada? (Question tirée des infocapsules et du document de questions et de réponses approuvés antérieurement)

Le gouvernement du Canada est préoccupé par le problème que constitue la violence familiale et y est sensible.

En consultation avec divers groupes spécialisés dans ce domaine, CIC a élaboré un processus simple et clair permettant aux époux nouvellement parrainés touchés par la mesure de résidence permanente conditionnelle, qui sont victimes de mauvais traitements ou de négligence de se manifester sans crainte de faire l'objet de mesures d'exécution de la loi.

Des lignes directrices ont également été préparées pour aider les agents dans le traitement des demandes d'exception de l'application de la condition fondées sur de mauvais traitements ou de la négligence et des renseignements de nature délicate qui s'y rattachent. Ce processus simple permet aux époux légitimes se trouvant dans une situation de mauvais traitements de se manifester sans crainte de compromettre leur statut de résident permanent au Canada.

31. How does this Bill intersect with MP Ambler's Motion on proxy marriage?

The *Zero Tolerance for Barbaric Cultural Practices Act* would prevent underage marriages and forced marriages in Canada, and would prohibit taking a child out of Canada for an underage or forced marriage. It would not stop parents from having a child who is physically present in Canada participate in a marriage ceremony in another country by proxy, telephone or similar means where they are underage or the marriage is forced.

Both this Bill and MP Ambler's motion deal with the very serious issue of barbaric cultural practices.

31. En quoi le projet de loi rejoint-il la motion du député Ambler sur le mariage par procuration?

La motion sur le mariage par procuration peut soulever des questions quant à la raison pour laquelle les mesures visant l'interdiction du recours au mariage par procuration, par téléphone et par fax à des fins d'immigration n'ont pas été incluses dans cet ensemble, tout

particulièrement parce qu'il s'ensuit une lacune relativement à la protection des enfants canadiens. En fait, le projet de loi empêcherait le mariage d'une personne mineure et le mariage forcé, mais n'empêcherait pas les parents d'avoir un enfant présent au Canada, mais qui participe à une cérémonie de mariage tenue dans un autre pays par procuration, par téléphone ou par d'autres moyens similaire alors que l'enfant est mineur ou que le mariage est forcé.

Ce projet de loi et la motion de la député Ambler traitent de la question très importante des pratiques culturelles barbares.

PART 2: CIVIL MARRIAGE ACT AMENDMENTS

PARTIE 2 : MODIFICATIONS À LA LOI SUR LE MARIAGE CIVIL

1. What is the current minimum age for marriage in Canada?

The federal and provincial governments share constitutional power with respect to marriage: the Parliament of Canada has jurisdiction over “marriage and divorce” (capacity for marriage) whereas the provincial legislatures have jurisdiction over “the solemnization of marriage in the province”.

There is currently no national minimum age for marriage in Canada below which no marriage may be legally contracted. Federal legislation applicable only in Quebec sets the minimum age at 16 (section 6 of the *Federal Law—Civil Law Harmonization Act, No. 1*). Elsewhere in Canada, the pre-confederation federal common law (court decisions) applies. It is unclear but appears to set the minimum age at 12 for girls and 14 for boys, or in some cases as low as age seven. The provinces and territories provide for additional requirements for marriages under the age of majority (18 or 19), such as parental consent or court approval.

1. Quel est l'âge minimum actuel pour le mariage au Canada?

Les gouvernements fédéral et provinciaux partagent des compétences constitutionnelles en ce qui a trait au mariage : le Parlement du Canada exerce des compétences en matière de « mariage et de divorce » (capacité de se marier), alors que les assemblées législatives provinciales ont compétence sur « la célébration du mariage dans la province ».

À l'heure actuelle, il n'y a, au Canada, aucun âge minimum national en dessous duquel une personne ne peut se marier légalement. La législation fédérale actuelle qui s'applique uniquement à la province de Québec établit l'âge minimum à 16 ans (article 6 de la *Loi d'harmonisation no 1 du droit fédéral avec le droit civil*). Ailleurs au Canada, la *common law* fédérale établie avant la Confédération (décisions judiciaires) s'applique. Elle n'est pas très claire, mais elle semble établir l'âge minimum à 12 ans pour les filles, et à 14 ans pour les garçons; dans certains cas, l'âge fixé est de sept ans. Les provinces et les territoires prévoient des exigences additionnelles pour les mariages de personnes n'ayant pas encore atteint l'âge de la majorité (18 ou 19 ans), comme le consentement des parents ou l'autorisation du tribunal.

2. What is the minimum age for marriage in other like-minded countries?

Sweden and Switzerland appear to be the only like-minded democratic countries with a minimum age of 18 below which no marriage may be legally conducted. Austria, Australia, Finland, Germany, Italy, New Zealand, Norway and the UK have 16 as the minimum age below which no one can marry even with parental consent. This is consistent with the proposal in the Bill. Several like-minded countries have set 18 as the age of marriage without additional consent from parents or the courts but have no minimum age of marriage (e.g. Belgium, France, Iceland, Ireland, The Netherlands, Spain, Sweden and most of the US states). This is similar to the current law in Canada.

2. Quel est l'âge minimum pour le mariage dans d'autres pays d'optique commune?

La Suède et la Suisse semblent être les seuls pays démocratiques d'optique commune dont l'âge minimum en dessous duquel aucun mariage légitime ne peut être célébré est de 18 ans. L'Autriche, l'Australie, la Finlande, l'Allemagne, l'Italie, la Nouvelle-Zélande, la Norvège et le Royaume-Uni ont tous fixé à 16 ans l'âge minimum en dessous duquel personne ne peut se marier, même avec le consentement des parents. Cette mesure est conforme à la proposition du projet de loi. Plusieurs pays d'optique commune ont fixé à 18 ans l'âge auquel il est possible de se marier sans le consentement des parents ou des tribunaux, mais n'ont pas d'âge minimum de mariage (p. ex. la Belgique, la France, l'Islande, les Pays-Bas, l'Espagne, la Suède et la plupart des États des États-Unis). Ces mesures sont semblables aux dispositions législatives actuelles du Canada.

3. Why not make 18 the minimum age for marriage?

Setting a national minimum age of 16 years for marriage is consistent with the current federal legislation that applies only with regard to the Province of Quebec (section 6 of the *Federal Law—Civil Law Harmonization Act, No. 1*). It is also consistent with what happens now in Canada, where very few marriages are contracted between individuals under 16, but some limited exceptions are made for mature minors – 16 and 17 year olds – under certain circumstances, for example where one is pregnant.

Setting a new federal minimum age at 18 would eliminate all flexibility to reflect the choices of mature minors of 16 and 17 to make a commitment to one another, particularly where they have a child together.

It is possible, however, that a requirement for parental consent for marriages of those who are under the age of majority could camouflage a forced marriage, because it's usually the parents who are doing the forcing. As a result, the Minister of Justice has asked his

provincial and territorial counterparts to consider taking additional measures to complement these reforms by requiring judicial review and consent for all marriages between the age of 16 and the age of majority to ensure that there is free and enlightened consent and avoid any possibility of forced marriages of minors.

A national minimum age of marriage serves as a building block for the criminal offences related to underage marriages and the underage marriage peace bond proposed in this Bill.

3. Pourquoi ne pas faire de 18 ans l'âge minimal pour le mariage?

L'établissement d'un âge minimal national à 16 ans pour le mariage est conforme à la législation fédérale actuelle qui s'applique uniquement à la province de Québec (article 6 de la *Loi d'harmonisation no 1 du droit fédéral avec le droit civil*). Il est également conforme à ce que l'on constate au Canada actuellement où très peu de mariages sont contractés entre des personnes de moins de 16 ans, mais où certaines exceptions limitées sont prévues pour des mineurs matures – de 16 et de 17 ans – dans certaines circonstances (p. ex. lorsque la jeune femme est enceinte).

L'établissement d'un nouvel âge minimal à 18 ans éliminerait toute marge de manœuvre pour refléter les choix de mineurs matures de 16 et de 17 ans qui s'engagent mutuellement, notamment lorsqu'un enfant est né de leur union.

Il est toutefois possible qu'une exigence selon laquelle les parents doivent consentir au mariage de personnes mineures couvre un mariage forcé, étant donné que c'est habituellement les parents qui imposent de tels mariages. Par conséquent, le ministre de la Justice a demandé à ses homologues provinciaux et territoriaux d'envisager de prendre des mesures supplémentaires qui s'ajouteraient à ces réformes, en exigeant notamment, outre le consentement, le contrôle judiciaire de tous les mariages contractés entre 16 ans et l'âge de la majorité afin de veiller à ce qu'un consentement libre et éclairé ait été donné.

Un âge minimal national pour le mariage servirait de fondement pour les infractions criminelles liées aux mariages d'enfants et pour l'engagement de ne pas troubler l'ordre public en lien avec les mariages forcés ou les mariages précoces proposé dans le projet de loi.

4. Why does the Bill include an amendment to the *Civil Marriage Act* to indicate that marriage requires the enlightened consent of two persons be the spouse of each other?

This legal requirement for a valid marriage is currently contained in the common law (court decisions) for most of Canada, and in federal legislation that applies only with regard to the

Province of Quebec (section 5 of the *Federal Law—Civil Law Harmonization Act, No. 1*). This proposed amendment would act to codify the requirement in federal legislation as a national standard extending the current common law and law regarding the Province of Quebec only. This codification also serves as a building block for the criminal offences related to forced marriages and the forced marriage peace bond proposed in this Bill.

4. Pourquoi le projet de loi comporte-t-il une modification à la *Loi sur le mariage civil* selon laquelle le mariage requiert le consentement éclairé de deux personnes à se prendre mutuellement pour époux?

Cette exigence juridique relative à la validité du mariage figure dans la common law (décisions de la cour) et s'applique dans presque tout le Canada; elle se retrouve également dans la législation fédérale qui s'applique uniquement à la province de Québec (article 5 de la *Loi d'harmonisation n° 1 du droit fédéral avec le droit civil*). La modification proposée codifierait l'exigence dans la législation fédérale en tant que norme nationale, tout en élargissant la common law actuelle et la législation qui s'applique uniquement à la province de Québec. Cette codification sert aussi de fondement pour les infractions criminelles liées aux mariages d'enfants et pour l'engagement de ne pas troubler l'ordre public en lien avec les mariages forcés ou les mariages précoces proposé dans le projet de loi.

5. Why does the Bill include an amendment to the *Civil Marriage Act* that no person shall contract a new marriage until every previous marriage has been dissolved or declared null by a court order?

This Bill codifies as a national standard the current legal requirement found in the common law (court decisions), and in federal law that applies only in the Province of Quebec (section 7 of the *Federal Law—Civil Law Harmonization Act, No. 1*), that a person must dissolve one marriage, through death or court order, before entering a second marriage. This legal requirement already exists in section 2 of the *Civil Marriage Act* and is reflected in sections 290, 291 & 293 of the *Criminal Code*.

5. Pourquoi le projet de loi comporte-t-il une modification à la *Loi sur le mariage civil* selon laquelle nul ne peut contracter un nouveau mariage avant que tout mariage antérieur ait été dissous ou frappé de nullité par une ordonnance de la cour?

Le projet de loi codifie en tant que norme nationale l'exigence juridique actuelle prévue dans la common law (décisions de la cour) et dans la législation fédérale qui s'applique uniquement à la province de Québec (article 7 de la *Loi d'harmonisation n° 1 du droit fédéral avec le droit civil*), selon laquelle une personne ne peut contracter un nouveau mariage avant que tout mariage antérieur ait été dissous par le décès ou par une ordonnance

de la cour. Cette exigence juridique existe déjà dans l'article 2 de la *Loi sur le mariage civil* et se retrouve aux articles 290, 291 et 293 du *Code criminel*.

PART 3: *CRIMINAL CODE* AMENDMENTS

CRIMINAL CODE – EARLY AND FORCED MARRIAGE

PARTIE 3 : MODIFICATIONS AU *CODE CRIMINEL*

CODE CRIMINEL – MARIAGES PRÉCOCES ET FORCÉS

1. What is the current legal response to forced marriage?

Under current Canadian marriage law, in order for a marriage to be legally valid both parties to the marriage must provide their free and enlightened consent at the time of marriage. Where consent has not been given, or was given under duress, the marriage can be declared invalid when one of the spouses seeks a court order annulling the marriage on the ground of duress (meaning absence of consent). While there is no specific offence of “forced marriage” in the *Criminal Code*, a number of criminal offences may be committed in forcing someone into a marriage. Criminal offences may be committed against an individual both prior to and following a forced marriage. Relevant *Criminal Code* offences may include uttering threats, assault, forcible confinement, criminal harassment, counselling suicide and kidnapping.

1. Quelle est la réponse juridique actuelle au mariage forcé?

Selon les lois canadiennes, pour qu'un mariage soit reconnu comme un mariage légitime, les deux parties doivent donner leur contentement libre et éclairé au moment du mariage. Si le consentement n'est pas donné ou qu'il est donné sous la contrainte, le mariage peut être déclaré invalide lorsque l'un des époux demande au tribunal de rendre une ordonnance prévoyant que le mariage est nul au motif qu'il a été contracté sous la contrainte (absence de consentement). Bien que le *Code criminel* ne prévoit nommément aucune infraction concernant le « mariage forcé », un certain nombre d'infractions criminelles peuvent être commises du fait de contraindre une personne à se marier. Les infractions criminelles peuvent être commises à l'encontre d'une personne tant avant que pendant un mariage. Les infractions pertinentes du *Code criminel* peuvent comprendre la profération de menaces, les voies de fait, la séquestration, le harcèlement criminel, l'incitation au suicide et l'enlèvement.

2. How many criminal cases of forced marriage have there been in Canada?

There is no criminal justice system data on the number of forced marriage cases in Canada, as these cases may be charged under a variety of different general offences (e.g.

assault, uttering threats, criminal harassment, forcible confinement or kidnapping). To date there is only one reported criminal case in Canada dealing specifically with forced marriage. The case involved assault causing bodily harm on an adult woman by her uncle and his three adult children with a view to coercing her to marry against her will. The victim's uncle and one of his sons received a 90-day jail term and all four perpetrators were ordered to take gender equality counselling (*R. v. Bandesha*, 2013 ABCA 255).

2. Combien d'affaires criminelles de mariages forcés a-t-on répertoriées au Canada?

Il n'y a aucune donnée du système de justice pénale sur le nombre de cas de mariages forcés au Canada, puisque ces affaires peuvent faire l'objet de poursuites en vertu de différentes infractions générales (p. ex. les voies de fait, la profération de menaces, le harcèlement criminel, la séquestration ou l'enlèvement). À ce jour, on ne compte qu'une seule cause criminelle rapportée au Canada qui traite spécifiquement du mariage forcé. Dans cette affaire, une femme adulte a été victime de voies de fait causant des lésions corporelles aux mains de son oncle et des trois enfants adultes de celui-ci, en vue de l'obliger à se marier contre son gré. L'oncle de la victime et l'un des fils de celui-ci ont reçu une peine d'emprisonnement de 90 jours, et les quatre agresseurs ont reçu l'ordre de participer à des séances de counselling sur l'égalité entre les sexes. (*R. c. Bandesha*, 2013 ABCA 255).

3. How does the Bill address early and forced marriage?

The Bill proposes to create two new offences of knowingly celebrating, aiding or participating in a forced marriage ceremony, or in a marriage ceremony involving a person under the age of 16. In terms of knowingly celebrating such a marriage ceremony, the offence would apply whether or not the marriage officiant is authorized by law to conduct the ceremony (meaning licensed by the province in which the ceremony takes place) where they know that one of the people they are marrying does not consent to the marriage or is underage.

In terms of knowingly aiding or participating in a forced marriage ceremony, or in a marriage ceremony involving a person under the age of 16, the offence would apply where a person (likely a parent or person in a position of authority relative to the person who does not wish to marry) knowingly and willingly took some active steps with a view to helping the marriage ceremony take place, such as being a signatory witness or transporting the person being married to the ceremony. The new offence directly addresses the social harm caused by individual and community endorsement of a marriage ceremony involving an

unwilling person or an underage child, as the ceremony creates an unwanted legal bond that is difficult to sever and within which sexual assault is expected to occur.

This offence would be punishable by five years' imprisonment. This offence would not criminalize the person who is forced to marry or who marries while underage.

3. De quelle façon le projet de loi prévient-il les mariages précoces et forcés?

Le projet de loi propose de créer deux nouvelles infractions visant le fait d'aider ou de participer à une cérémonie en sachant qu'il s'agit d'un mariage forcé ou d'un mariage où l'une des personnes est âgée de moins de 16 ans, ou de célébrer un tel mariage. En ce qui a trait au fait de célébrer sciemment une telle cérémonie de mariage, l'infraction s'appliquerait que le célébrant soit autorisé ou non par la loi (ce qui signifie qu'il est autorisé par la province dans laquelle a lieu la cérémonie) à célébrer la cérémonie, dans le cadre de laquelle il sait que l'une des personnes dont il célèbre le mariage n'a pas consenti à ce mariage ou n'a pas l'âge légal pour se marier.

En ce qui a trait au fait d'aider ou de participer à une cérémonie en sachant qu'il s'agit d'un mariage forcé, ou d'un mariage où l'une des personnes est âgée de moins de 16 ans, l'infraction s'appliquerait dans les cas où une personne (susceptible d'être un parent ou une personne en position d'autorité par rapport à la personne qui ne souhaite pas se marier) a sciemment et volontairement pris des mesures actives en vue permettre à la cérémonie d'avoir lieu, comme en étant témoin ou en emmenant la personne qui se marie à la cérémonie. La nouvelle infraction tient compte directement du préjudice à la société causé par la sanction individuelle et collective d'une cérémonie de mariage dont une des parties se marie contre son gré ou est un enfant n'ayant pas l'âge légal de se marier, car cette cérémonie crée un lien de droit non voulu difficile à rompre et dans le cadre duquel devraient se produire des agressions sexuelles.

Cette infraction serait passible d'une peine d'emprisonnement de cinq ans. Elle ne criminaliserait pas la personne forcée de se marier ou qui se marie sans avoir l'âge légal de le faire.

4. Will these new offences criminalize people who are merely attending the wedding?

No. The law does not impose criminal liability on persons for merely witnessing wrongdoing and failing to stop it. This principle is solidly grounded in jurisprudence in relation to similar types of offences. An individual who is merely "at the scene" without any active conduct that is specifically directed toward helping the marriage ceremony

occur, will not be subject to prosecution. Morally, however, wherever a person attends a wedding ceremony knowing that one of the people being married does not want to marry or is below the minimum age of marriage, they are helping to sanction the creation of a harmful legal bond. Attendees who have such knowledge should take steps to try to stop the wedding.

4. Ces nouvelles infractions criminaliseraient-elles les personnes qui assistent seulement au mariage?

Non. La loi n'impose aucune responsabilité criminelle aux personnes qui assistent seulement à un acte répréhensible et qui ne réussissent pas à l'arrêter. Ce principe est solidement ancré dans la jurisprudence liée à des types similaires d'infractions. Aucune poursuite ne sera intentée contre une personne qui se trouve simplement « sur les lieux », sans commettre des actes actifs qui visent particulièrement à aider au déroulement de la cérémonie. Cependant, sur le plan moral, lorsqu'une personne assiste à un mariage en sachant que l'une des personnes qui se marient ne souhaite pas se marier ou n'a pas l'âge de nubilité, elle contribue à sanctionner la création d'un lien de droit préjudiciable. Les invités qui sont au courant d'une telle information devraient prendre des mesures pour faire en sorte que le mariage n'ait pas lieu.

5. Why does the Bill amend section 295 of the *Criminal Code*?

Section 295 of the *Criminal Code* applies to lawfully authorized officiants who conduct marriage ceremonies contrary to the laws of the province in which the marriage is solemnized and they are licensed. Provincial marriage laws require that federal marriage laws also be respected, but this may not be clear based on the legislative text. This Bill amends this section in order to clarify that the offence of solemnizing a marriage contrary to law includes solemnizing a marriage in contravention of either federal or provincial law, including where one of the parties to marriage is under the age of 16 years; is marrying against their will; or is still married to another person.

5. Pourquoi le projet de loi modifie-t-il l'article 295 du *Code criminel*?

L'article 295 du *Code criminel* s'applique à quiconque, étant légalement autorisé à célébrer le mariage, qui célèbre un mariage en violation des lois de la province où il est célébré. Les lois provinciales sur le mariage exigent le respect également des lois fédérales sur le mariage; toutefois, ceci pourrait ne pas être clair en raison du texte législatif. Le projet de loi modifie cet article pour préciser que l'infraction liée à la célébration d'un mariage en violation de la loi comprend la célébration d'un mariage en violation des lois fédérales ou

provinciales, y compris dans le cas où l'une des parties à un mariage est âgée de moins de 16 ans; se marie contre son gré ou est encore mariée avec une autre personne.

6. Will the Bill prevent parents from taking their children out of Canada to have them married against their will or while they are underage?

The Bill proposes to add to the existing offence of taking a young person out of Canada for the purpose of having certain offences committed (section 273.3) the new offences of a forced or underage marriage ceremonies in another country. The offence is punishable by a maximum of five years' imprisonment.

This proposed change will respond to concerns raised by child protection authorities that they currently lack the necessary tools to prevent the removal of a child from Canada for a forced or underage marriage.

6. Le projet de loi empêchera-t-il les parents de faire passer à l'étranger leurs enfants pour qu'ils se marient contre leur gré ou sans en avoir l'âge légal?

Le projet de loi propose d'ajouter à l'infraction actuelle liée au fait de faire passer à l'étranger un jeune en vue de permettre la commission de certaines infractions dans un autre pays (article 273.3) les nouvelles infractions liées aux cérémonies de mariage forcé ou précoce. L'infraction est passible d'une peine maximale d'emprisonnement de cinq ans.

Cette modification qui est proposée répondra aux inquiétudes des autorités de la protection de l'enfance, à savoir qu'elles n'ont actuellement pas les outils nécessaires pour empêcher le passage d'un enfant à l'étranger pour qu'il se marie contre son gré ou sans en avoir l'âge légal.

7. Why not add forced marriage to the aggravating factors in sentencing?

This is not necessary. There are already several distinct aggravating factors for the purposes of sentencing that could apply, such as when the crime was committed against a spouse, or against a child (under the age of 18) or where the offender abused a position of trust or authority in relation to the victim (paragraphs 718.2(a)(i) and (ii.1)). In addition, it is an aggravating factor for sentencing when the offence was motivated by bias, prejudice or hate on various grounds including sex, sexual orientation or disability (paragraph 718.2(a)(i)).

7. Pourquoi ne pas ajouter le mariage forcé aux facteurs aggravants aux fins de la détermination de la peine?

Cela n'est pas nécessaire. Il existe déjà plusieurs facteurs aggravants distincts aux fins de la détermination de la peine qui pourraient s'appliquer, notamment lorsque l'acte criminel a été perpétré contre un époux ou contre un enfant (âgé de moins de 18 ans) ou lorsque l'infraction perpétrée par le contrevenant constitue un abus de la confiance de la victime ou un abus d'autorité à son égard (sous-alinéas 718.2a)(i) et (ii.1)). De plus, lorsque l'infraction était motivée par des préjugés ou la haine contre différents groupes, notamment fondées sur des facteurs comme le sexe, l'orientation sexuelle ou le handicap (sous-alinéa 718.2a)(i)), il s'agit de facteurs aggravants aux fins de la détermination de la peine.

8. Which like-minded countries have forced marriage offences under their criminal law?

The following like-minded countries have recently either introduced criminal offences of forced marriage or increased the maximum penalty:

- Sweden increased the maximum penalty for forced marriage to four years' imprisonment in July 2014 (the original offence was introduced in 1998);
- The UK introduced a new forced marriage offence which came into force in June 2014 (the same Bill introduced a parallel offence in Scotland). The new offence is punishable on indictment to imprisonment for a term not exceeding seven years;
- The Netherlands raised the maximum sentence for forced marriage from nine months to two years in July 2013;
- Australia introduced forced and servile marriage offences which came into force in March 2013. The forced marriage offences carry a maximum penalty of four years' imprisonment, or seven years' imprisonment for an aggravated offence;
- France introduced an offence of removing a person from the country for the purpose of a forced marriage in 2013, which is punishable by three years' imprisonment;
- Switzerland introduced an offence of forced marriage in February 2011, which carries a maximum penalty of five years' imprisonment;
- Germany also introduced an offence of forced marriage, which came into force in 2011. It is punishable by five years' imprisonment;
- Belgium introduced a forced marriage offence in 2007, which includes the possibility of imprisonment between one month and two years in prison;
- Austria introduced a forced marriage offence in 2006, which carries a punishment of imprisonment from six months to five years in prison;

- Denmark raised the maximum sentence for forced marriage from two to four years' imprisonment in 2008; and
- Norway introduced a forced marriage offence in 2003 that provides a maximum imprisonment of six years.

8. Dans quels pays d'optique commune les infractions de mariage forcé constituent-elles des infractions en vertu du droit criminel?

Les pays d'optique commune suivants ont récemment soit ajouté des infractions criminelles de mariage forcé, soit augmenté la peine maximale :

- En juillet 2014 (l'infraction d'origine a été adoptée en 1998), la Suède a fait passer la peine maximale pour le mariage forcé à quatre ans d'emprisonnement;
- Le Royaume-Uni (R.-U.) a créé une nouvelle infraction de mariage forcé qui est entrée en vigueur en juin 2014 (le même projet de loi prévoyait une infraction parallèle en Écosse). La nouvelle infraction est punissable par voie de mise en accusation d'une peine d'emprisonnement maximale de sept ans;
- En juillet 2013, les Pays-Bas ont fait passer la peine maximale pour le mariage forcé de neuf mois à deux ans;
- L'Australie a créé les infractions de mariage forcé et de mariage servile, entrées en vigueur en mars 2013. Les infractions de mariage forcé sont punissables d'un emprisonnement de quatre ans, ou de sept ans en présence de facteurs aggravants;
- En 2013, la France a créé l'infraction de faire quitter le territoire du pays à une personne aux fins de mariage forcé, qui est punissable d'une peine d'emprisonnement de trois ans;
- En février 2011, la Suisse a créé une infraction de mariage forcé, punissable d'un emprisonnement maximal de cinq ans;
- L'Allemagne a également créé une infraction de mariage forcé qui est entrée en vigueur en 2011. L'infraction est punissable d'un emprisonnement de cinq ans;
- En 2007, la Belgique a créé une infraction de mariage forcé, qui comprend une possibilité d'emprisonnement allant d'un mois à deux ans;
- En 2006, l'Autriche a créé une infraction de mariage forcé punissable d'une peine d'emprisonnement de six mois à cinq ans;
- En 2008, le Danemark a fait passer la peine d'emprisonnement maximale pour le mariage forcé de deux à quatre ans;
- En 2003, la Norvège a créé une infraction de mariage forcé punissable d'une peine d'emprisonnement maximale de six ans.

9. Why doesn't the Bill contain civil protection orders like those in the UK that are available under the *Forced Marriage (Civil Protection) Act (2007)*?

Civil protection orders in Canada fall under provincial jurisdiction. For example, nine Canadian provinces and territories have enacted family violence legislation providing for civil protection orders in cases of family violence. The peace bond provisions in the *Criminal Code*, which are under federal jurisdiction, are somewhat similar to the UK civil protection orders in that they provide protective and preventive orders for victims without requiring the laying of criminal charges against the defendant. The new forced or underage peace bond provisions in the Bill represent the Canadian federal equivalent to the UK civil protection orders. In order to introduce the specific forced and underage peace bond provision in the Bill, it was necessary to create the specific offences of actively participating in a forced or underage marriage ceremony.

9. Pourquoi le projet de loi ne contient-il pas d'ordonnances de protection civile comme celles du R.-U. qui sont prévues dans le *Forced Marriage (Civil Protection) Act (2007)*?

Les ordonnances de protection civile au Canada relèvent de la compétence provinciale. Par exemple, neuf provinces et territoires du Canada ont adopté des lois en matière de violence familiale prévoyant des ordonnances de protection civile dans les cas de violence familiale. Les dispositions du *Code criminel* relatives à l'engagement de ne pas troubler l'ordre public, qui sont de compétence fédérale, sont quelque peu semblables aux ordonnances de protection civile du R.-U. en ce qu'elles prévoient des ordonnances de protection et des ordonnances préventives pour les victimes, sans qu'il ne soit nécessaire de porter des accusations criminelles contre le défendeur. Les nouvelles dispositions relatives aux engagements de ne pas troubler l'ordre public ayant trait au mariage forcé ou au mariage de mineurs du projet de loi représentent l'équivalent fédéral canadien des ordonnances de protection civile du R.-U. Afin d'adopter l'infraction spécifique d'engagement de ne pas troubler l'ordre public ayant trait au mariage forcé et au mariage de mineurs, il était nécessaire de créer des infractions spécifiques de participation active à la cérémonie d'un mariage forcé ou d'un mariage de mineurs.

10. What is a peace bond and what does the proposed new peace bond offer?

A peace bond, or a recognizance, is a court order provided for in the *Criminal Code* (sections 810-810.2) to protect people who have reasonable grounds to believe that they will be the victim of a crime or that a crime may be committed by a specified person. These preventative court orders in the *Criminal Code* require the respondent to agree to specific conditions to keep the peace, even if that person has not yet committed an offence or been

arrested. The person subject to a peace bond (the respondent) must abide by court ordered conditions. A breach of the terms of the peace bond is an offence under section 811 currently punishable by a maximum two-year prison sentence upon indictment (Bill C-26 proposes changing this to a maximum four-year prison sentence upon indictment).

Where there are reasonable grounds to believe that a person will specifically aid or participate in a forced or early marriage ceremony involving someone else (for example, their child), or will take a young person out of Canada for the purposes of a forced or early marriage ceremony abroad, they could be brought to court and ordered to enter into a recognizance to keep the peace and be of good behaviour. A court would be empowered to make orders that could be particularly useful in specifically preventing an early or forced marriage, whether in Canada or abroad, such as ordering the person to surrender travel documents, to refrain from making arrangements or agreements in relation to the marriage, or to participate in a family violence counselling program.

10. Qu'est-ce qu'un engagement de ne pas troubler l'ordre public et quel est l'effet du nouvel engagement de ne pas troubler l'ordre public proposé?

Un engagement de ne pas troubler l'ordre public, ou un engagement, est une ordonnance du tribunal prévue au *Code criminel* (articles 810 à 810.2) visant à protéger les personnes qui ont des motifs raisonnables de craindre qu'elles seront victimes d'un acte criminel ou qu'un acte criminel sera perpétré par une personne précise. Ces ordonnances préventives du tribunal prévues au *Code criminel* exigent que l'intimé accepte des conditions précises de ne pas troubler l'ordre public, même si cette personne n'a pas commis d'infraction ou n'a pas été arrêtée. La personne visée par une ordonnance de ne pas troubler l'ordre public (l'intimée) doit se conformer aux conditions imposées par le tribunal. La violation des conditions de l'ordonnance de ne pas troubler l'ordre public constitue une infraction en vertu de l'article 811, actuellement punissable d'un emprisonnement maximal de deux ans, par mise en accusation (le projet de loi C-26 propose de faire passer la peine à un emprisonnement maximal de quatre ans, par mise en accusation).

Lorsqu'il y a des motifs raisonnables de croire qu'une personne aidera ou participera expressément à la cérémonie d'un mariage forcé ou précoce impliquant une autre personne (par exemple son enfant), ou qu'elle emmènera cette jeune personne en dehors du Canada afin de la marier de force ou de célébrer un mariage précoce à l'étranger, elle pourrait être traînée en justice et une ordonnance pourrait être rendue à son endroit afin qu'elle signe un engagement de ne pas troubler l'ordre public et d'avoir une bonne conduite. Un tribunal pourrait être habilité à rendre des ordonnances qui seraient particulièrement utiles pour prévenir expressément un mariage précoce ou forcé, au Canada ou à l'étranger, notamment ordonner à une personne de remettre ses documents de voyage, de ne pas prendre

d'arrangements ou conclure des ententes ayant trait au mariage, ou de participer à un programme de sensibilisation à la violence familiale.

11. Won't criminalizing forced marriage ceremonies push the practice further underground?

Some front-line service-providers have expressed concern that criminalization will push forced marriages further underground since many victims do not wish to have their family members arrested and prosecuted.

The Bill does not propose the introduction of a specific offence of "forcing a person to marry" in the *Criminal Code*. Most of the conduct leading to a forced marriage is already criminal (e.g. assault, forcible confinement, criminal harassment). Instead, the Bill proposes to fill a gap in the current law by focussing on the active participation in the forced marriage ceremony itself. This allows individuals who fear they will be forced into a marriage to clearly indicate to those coercing them that they will be committing a crime if they go ahead with the marriage. It also permits these victims to obtain a forced marriage peace bond to prevent the forced marriage ceremony from occurring. Since peace bonds are not offences, this empowers victims to take steps to prevent the forced marriage without having their family members charged for forcing them to marry, unless the conditions of the peace bond are breached.

11. Le fait de criminaliser les célébrations de mariages forcés ne poussera-t-il pas davantage cette pratique dans la clandestinité?

Certains intervenants de première ligne ont dit s'inquiéter du fait que la criminalisation pourrait pousser davantage les mariages forcés dans la clandestinité, puisque bon nombre de victimes ne veulent pas que les membres de leur famille se fassent arrêter ou ne soient l'objet de poursuites.

Le projet de loi ne propose pas d'ajouter une infraction précise de « forcer une personne à se marier » au *Code criminel*. La plupart des comportements menant à un mariage forcé sont déjà criminalisés (p. ex. voies de fait, séquestration, harcèlement criminel). Le projet de loi propose plutôt de combler une lacune du droit actuel en mettant l'accent sur la participation active à la célébration même d'un mariage forcé. Cela permettra aux personnes qui craignent d'être forcées de se marier d'indiquer clairement à ceux qui veulent les y obliger qu'ils commettraient un crime s'ils procédaient au mariage. Cela permettra aussi d'obtenir un engagement de ne pas troubler l'ordre public en lien avec les mariages forcés pour empêcher la tenue de la célébration d'un mariage forcé. Comme les

engagements de ne pas troubler l'ordre public ne sont pas des infractions, cela donnerait aux victimes la capacité de prendre des mesures pour empêcher le mariage forcé sans que des membres de la famille soient accusés de les avoir forcées à se marier, à moins que les conditions de l'engagement ne soient pas respectées.

12. Why does the Bill amend section 150.1 of the *Criminal Code*?

The Bill proposes to repeal paragraph 150.1(2.1)(b) of the *Criminal Code*, which provides an exception from criminal liability for what would otherwise be the listed sexual offences involving a child between the ages of 14 and 16 years if the complainant and the accused are married. This exception will no longer be applicable since the proposed amendments to the *Civil Marriage Act* will prohibit marriages below the age of 16. However, to account for marriages involving a person between the ages of 14 and 16 that exist at the coming into force of the measures in the Bill, the Bill also includes a transitional provision to continue this exception where, at the date of coming into force of the amendments to the *Civil Marriage Act* in this bill, the accused is married to the complainant who is still under the age of 16.

12. Pourquoi le projet de loi propose-t-il de modifier l'article 150.1 du *Code criminel*?

Le projet de loi propose d'abroger l'alinéa 150.1(2.1)b) du *Code criminel*, qui prévoit une exception à la responsabilité criminelle pour ce qui serait autrement les infractions sexuelles énumérées impliquant des adolescents entre 14 et 16 ans si le plaignant et l'accusé sont mariés. Cette exception ne sera plus applicable puisque les modifications proposées à la *Loi sur le mariage civil* interdiront les mariages pour les personnes âgées de moins de 16 ans. Toutefois, pour tenir compte des mariages qui existent au moment de l'entrée en vigueur des mesures prévues dans le projet de loi et au sein desquels une personne est âgée de 14 à 16 ans, le projet de loi comprend également une disposition transitoire pour maintenir l'exception lorsque, au moment de l'entrée en vigueur des modifications à la *Loi sur le mariage civil* prévues dans le présent projet de loi, l'accusé est marié au plaignant qui est toujours âgé de moins de 16 ans.

CRIMINAL CODE – “HONOUR” - BASED VIOLENCE AND PROVOCATION

CODE CRIMINEL – VIOLENCE LIÉE À L'« HONNEUR » ET PROVOCATION

13. Why is there no specific offence of “honour” - based violence?

The existing general offences in the *Criminal Code* already cover the conduct involved in “honour” - based violence (e.g. assault, uttering threats, forcible confinement, counselling suicide and murder). Like the conduct commonly referred to as “forced marriage”, the concept of “honour” - based violence refers to conduct that could involve the commission of one or more of a range of existing offences that are committed for a specific motive, i.e. the motive of restoring the family’s “honour”. Any “honour” - based violence offence would, in addition to requiring the Crown to prove the offence itself, have additional proof requirements in relation to the specific motive of “honour”. This approach would significantly increase the evidentiary burden for Crown prosecutors and therefore reduce the likelihood of charges being laid for such an offence and make successful convictions more difficult.

13. Pourquoi n'existe-t-il pas d'infraction particulière en ce qui concerne la violence liée à l'honneur?

Les infractions générales actuelles prévues au *Code criminel* couvrent déjà le comportement visé en ce qui concerne la violence liée à l'honneur (p. ex. l'agression, les menaces, la séquestration, l'incitation au suicide et le meurtre). Comme en ce qui a trait au comportement que l'on appelle communément le « mariage forcé », le concept de la « violence liée à l'honneur » renvoie à un comportement susceptible de comprendre la perpétration d'une infraction ou plus parmi les infractions actuelles qui sont perpétrées pour un motif particulier, c.-à-d. pour le motif de rétablir l'honneur de la famille. Outre le fait d'exiger que le ministère public prouve l'infraction, toute infraction relative à la violence liée à l'honneur prévoirait des exigences additionnelles en matière de preuve concernant le motif particulier de l'« honneur ». Cette approche augmenterait considérablement le fardeau de la preuve pour les poursuivants du ministère public et, par conséquent, diminuerait la possibilité que des accusations soient portées relativement à une telle infraction, et rendrait les déclarations de culpabilité plus difficiles à obtenir.

14. Why not add “honour” - based violence to the aggravating factors in sentencing?

This is not necessary. There are already several distinct aggravating factors for the purposes of sentencing that could apply, such as when the crime was committed against a spouse, or against a child (under the age of 18) or where the offender abused a position of trust or

authority in relation to the victim (paragraphs 718.2(a)(i) and (ii.1)). In addition, it is an aggravating factor for sentencing when the offence was motivated by bias, prejudice or hate on various grounds including sex, sexual orientation or disability (paragraph 718.2(a)(i)). Further, the prosecution must establish the existence of any aggravating factor beyond a reasonable doubt. Demonstrating that an offence was committed to restore family honour would be a significant additional burden.

14. Pourquoi ne pas ajouter la violence liée à l'« honneur » aux facteurs aggravants en matière de détermination de la peine?

Cela n'est pas nécessaire. Il existe déjà de nombreux facteurs aggravants distincts susceptibles de s'appliquer aux fins de la détermination de la peine, comme lorsque l'acte criminel a été commis envers un conjoint ou à l'égard d'un enfant (âgé de moins de 18 ans), ou lorsqu'une infraction perpétrée par un délinquant constitue un abus de confiance ou d'autorité (sous-alinéas 718.2a)(i) et (ii.1)). En outre, lorsque l'infraction a été motivée par de la haine ou des préjugés fondés sur des facteurs tels que le sexe, l'orientation sexuelle ou la déficience (sous-alinéa 718.2a)(i)) cela constitue également un facteur aggravant aux fins de la détermination de la peine. De plus, la poursuite doit établir l'existence de tout facteur aggravant au-delà du doute raisonnable. Le fait d'avoir à démontrer qu'une infraction a été commise pour rétablir l'honneur de la famille constituerait un fardeau additionnel considérable.

15. What is the defence of provocation?

Section 232 of the *Criminal Code* provides for the partial defence of provocation. The defence applies only where an accused has been found to have committed murder. The defence will succeed where an accused raises a reasonable doubt that they committed the murder "in the heat of passion" after having lost control due to a sudden "wrongful act or insult" by the victim.

Engaging in conduct that one had a specific legal authorization to do – such as where a police officer executes a search warrant – cannot qualify as provocation. Otherwise, the "wrongful act or insult" done by the victim that provokes the accused to kill need not in any way be illegal – it must only be "sufficient to deprive an ordinary person of the power of self-control".

15. Qu'est-ce que la défense de provocation?

La défense partielle de provocation est prévue à l'article 232 du *Code criminel*. Elle ne s'applique que lorsqu'un accusé a été déclaré coupable de meurtre. La défense lui

permettra d'avoir gain de cause s'il soulève un doute raisonnable sur le fait qu'il ait commis un meurtre « dans le feu de l'action », après avoir perdu la maîtrise de lui-même à la suite d'une « action injuste » posée par une victime ou d'une « insulte » lancée par celle-ci.

Le fait pour une personne de faire quelque chose qu'elle avait l'autorisation légale de faire – tel que le fait pour un agent de police de procéder à l'exécution d'un mandat de perquisition – ne peut être considéré comme de la provocation. Autrement, l'« action injuste » posée par une victime ou l'insulte lancée par celle-ci qui pousserait un accusé à tuer n'a en aucun cas besoin d'être illégale – elle n'a qu'à être « suffisante pour priver une personne ordinaire du pouvoir de se maîtriser ».

16. Why is the provocation defence only a “partial defence”?

Where murder is proved, the defence operates as a defence to the murder charge, but rather than producing a complete acquittal, it produces a conviction for manslaughter. This is why provocation is often referred to as a “partial” defence.

Manslaughter carries a reduced level of social stigma relative to murder. It also carries a broad sentencing range with a high degree of judicial discretion – namely a maximum sentence of life in prison but no mandatory minimum term of incarceration (except where a firearm is used). By contrast, second degree murder is punishable by a mandatory life sentence and mandatory minimum parole eligibility of between 10 and 25 years.

16. Pourquoi la défense de provocation n'est-elle qu'une « défense partielle »?

Lorsque le meurtre est prouvé, la défense s'applique à l'accusation de meurtre, mais elle donne lieu à une condamnation pour homicide involontaire coupable plutôt qu'à un acquittement complet. C'est pourquoi on fait souvent référence à la provocation comme étant une « défense partielle ».

Le niveau de stigmatisation sociale associé à l'homicide involontaire coupable est plus faible que celui qui est associé au meurtre. Il emporte également une vaste gamme de peines et un degré élevé de pouvoir discrétionnaire judiciaire – soit une peine maximale d'emprisonnement à vie, mais sans l'imposition d'une peine minimale obligatoire de détention (sauf dans le cas où une arme à feu a été utilisée). À titre de comparaison, le meurtre au deuxième degré est punissable d'une peine obligatoire d'emprisonnement à vie sans possibilité de libération conditionnelle avant une période de 10 à 25 ans.

17. Why is the Government proposing this reform as part of this legislative package?

The partial defence of provocation has been raised in several so-called "honour" killing cases in Canada, although to date, no claim has been successful. The alleged provoking conduct in these cases was real or perceived marital infidelity and other forms of conduct that the offender perceived as disrespectful or defiant toward them or their families, given their cultural backgrounds.

These cases are similar to many spousal homicides which are not characterized as "honour" killings, but where the alleged provoking conduct was of a comparable nature, such as the victim's termination of the relationship (often coupled with taunts or insults by the victim) or actual or suspected infidelity on the part of the victim. The defence is often raised in spousal killings and has been successful in a number of cases.

In other honour-killing cases, young women have been killed for refusing to follow their families' wishes in terms of lifestyle and marriage or dating partners. While the defence of provocation has not yet been raised in these types of cases, nothing in law prevents this from happening in the future.

The Government believes the time has come to place limits on the defence of provocation so that it cannot be raised where a person kills in response to what they perceive as insulting or offensive words or actions by the victim.

17. Pourquoi le gouvernement propose-t-il cette réforme dans le cadre de ces mesures législatives?

La défense partielle de provocation a été soulevée dans de nombreuses affaires relatives à ce que l'on appelle le « crime lié à l'honneur » au Canada, mais, à ce jour, elle n'a pas permis d'avoir gain de cause. Le comportement provocateur allégué dans ces affaires était l'infidélité conjugale réelle ou perçue, et d'autres types de comportements perçus comme irrespectueux par le délinquant, ou provocateur à l'égard des délinquants ou de leurs familles, selon le contexte culturel.

Les affaires sont similaires à de nombreux homicides conjugaux qui ne sont pas qualifiés de « violence liée à l'honneur », mais dont le comportement provocateur allégué était de nature comparable, comme le fait pour la victime d'avoir mis fin à la relation (souvent accompagné de critiques ou d'insultes formulées par la victime) ou d'avoir été infidèle de façon réelle ou soupçonnée. La défense est souvent soulevée dans le cadre d'homicides conjugaux et elle a permis d'avoir gain de cause dans un certain nombre d'affaires.

Dans d'autres affaires de violence liée à l'honneur, de jeunes femmes ont été assassinées pour avoir refusé de respecter les attentes de leurs familles en ce qui a trait au style de vie, au mariage ou à la fréquentation de partenaires. La défense de provocation n'a pas encore été soulevée dans ces types d'affaires, mais rien en droit n'empêche qu'elle puisse l'être à l'avenir.

Le gouvernement croit que le temps est venu d'imposer des limites à la défense de provocation afin que celle-ci ne puisse être soulevée lorsqu'une personne en tue une autre en réponse à ce qu'elle perçoit comme étant des mots ou des gestes insultants ou injurieux formulés par la victime.

18. What reform is the government proposing?

Conduct by the victim that is legal – such as decisions about with whom to have a relationship, where to live or how to dress – should not excuse murder.

The proposed reform would therefore limit the circumstances for which a person can claim provocation as an excuse for murdering another. More specifically, the proposal would only allow the defence of provocation to be raised where the conduct of the victim that provoked the accused to kill amounted to a relatively serious criminal offence, i.e. an offence punishable by at least 5 years in prison, and would exclude the defence where the conduct of the victim was lawful.

All forms of serious criminality are punishable by at least 5 years, including:

- offences against the person (assaults (sections 265-268), criminal harassment (section 264), threatening bodily harm (section 264.1), kidnapping, forcible confinement and abduction (section 279 and sections 280 to 283), trafficking in persons (section 279.1 to 279.03);
- sexual offences against adults (sections 271 to 273) and against children (sections 151 to 155) including voyeurism (section 162), child pornography (section 163.1) and luring children over the internet (section 172.1);
- property-related offences such as robbery (section 344), extortion (section 346), breaking and entering (section 348), and theft (section 334) or damage (section 430) or fraud (section 380) in relation to property with a value over \$5000;
- offences against the administration of justice such bribery (sections 119 and 120), perjury (section 131), obstruction of justice (section 139); and
- organized crime (sections 467.11 to 467.13) and terrorism offences (sections 83.18 to 83.23).

Some offences with maximum penalties below 5 years include:

- Disobeying a court order (section 127 - 2 year maximum);
- Mailing obscene material (section 168 - 2 year maximum);
- Wilfully doing an indecent act in public with intent to insult or offend (section 173 – 2 year maximum);
- Public nudity (section 174 - summary conviction offence (6 year maximum)); and
- Theft or damage of property with a value under \$5000 (sections 334(b) and 430(4) - 2 year maximum).

18. Quelle réforme le gouvernement propose-t-il?

Le comportement légal d'une victime tel que le fait de décider avec qui avoir une relation, où vivre ou comment s'habiller – ne devrait pas servir d'excuse au meurtre.

La réforme proposée limiterait, par conséquent, les circonstances dans lesquelles une personne peut invoquer la provocation à titre d'excuse pour avoir assassiné une personne. Plus particulièrement, la proposition ne permettrait de soulever la défense de provocation que lorsque le comportement d'une victime qui a poussé un accusé à la tuer équivaut à une infraction criminelle relativement grave, c.-à-d. une infraction punissable d'au moins cinq ans d'emprisonnement, et exclurait la défense lorsque la conduite d'une victime était légale.

Toutes les formes de grande criminalité sont punissables d'au moins cinq ans d'emprisonnement, notamment :

- infractions contre la personne, telles que les voies de fait (articles 265 à 268), le harcèlement criminel (article 264), les menaces de causer des lésions corporelles (article 264.1), l'enlèvement, la séquestration (article 279 et articles 280 à 283), la traite des personnes (articles 279.1 à 279.03);
- infractions sexuelles envers des adultes (articles 271 à 273) et des enfants (articles 151 à 155) telles que le voyeurisme (article 162), la pornographie juvénile (article 163.1) et le leurre d'enfant au moyen d'Internet (article 172.1);
- infractions liées à la propriété telles que le vol qualifié (article 344), l'extorsion (article 346), l'introduction par effraction (article 348), et le vol (article 334) ou le méfait (article 430) ou la fraude (article 380) relativement à un objet d'une valeur de plus de 5 000 \$;
- infraction contre l'administration de la justice (articles 119 et 120), le parjure (article 131), l'entrave à la justice (article 139);

- crime organisé (articles 467.11 à 467.13) et infractions liées au terrorisme (articles 83.18 à 83.23).

Certaines infractions sont assorties d'une peine maximale de moins de cinq ans, notamment :

- Désobéissance à une ordonnance du tribunal (article 127 – deux ans au maximum);
- Mise à la poste de choses obscènes (article 168 – deux ans au maximum);
- Commission volontaire d'une action indécente dans un endroit public avec l'intention d'insulter ou d'offenser quelqu'un (article 173 – deux ans au maximum);
- Nudité dans un endroit public (article 174 – infraction punissable sur déclaration de culpabilité par procédure sommaire (six ans au maximum));
- Vol ou endommagement d'un bien d'une valeur de moins de 5 000 \$ (alinéa 334*b*) et paragraphe 430(4) – deux ans au maximum).

19. What is the relationship between the provocation defence and self-defence?

Self-defence is a defence for any offence if committed for the purpose of repelling the use of force or a threat of force against a person. It involves the preventive and proportionate use of force to suppress an ongoing or future threat to a human life. This explains why self-defence is a full defence, meaning that if it is successful, it results in a complete acquittal.

Provocation, by contrast, grants leniency for a person's reactive homicidal response to a wide variety of "insults" or other "wrongful" words or actions, which need not necessarily involve a threatening or other unlawful conduct. Provocation is considered to be a "concession to human weakness," – as opposed to a justifiable use of force – and where successful, results in an acquittal on the murder charge, but a conviction for manslaughter.

Provocation can be argued alongside self-defence where the provocation that led to the killing is alleged to be a physical confrontation or other threatening conduct by the victim that generated a mix of both fear and anger in the accused.

Under the proposed reforms, threatening and assaultive offences as would still be eligible to be considered as provocation, because all such offences are punishable by at least 5 years in prison. If self-defence is argued and fails, for instance because the amount of force used was excessive, the provocation defence might be applicable to the murder charge.

19. Quel lien y a-t-il entre la défense de provocation et la légitime défense?

La légitime défense est une défense pour toute infraction si cette dernière est commise dans le but de repousser le recours à la force ou une menace de recours à la force contre une personne. Elle suppose le recours préventif et proportionné à la force pour éliminer une menace actuelle ou future relativement à une vie humaine. Cela explique pourquoi la légitime défense est une défense complète, ce qui signifie que si elle est fructueuse, elle entraîne un acquittement complet.

En revanche, la provocation justifie la réponse meurtrière réactive d'une personne à une grande variété d'« insultes » ou d'autres mots ou gestes « répréhensibles », pour lesquels il n'est pas requis qu'il y ait nécessairement une menace ou d'autres comportements illégaux. La provocation est considérée comme étant une « concession à la faiblesse humaine » – plutôt qu'un recours justifié à la force – et lorsque cette défense est fructueuse, elle entraîne un acquittement à l'égard de l'accusation de meurtre, mais une déclaration de culpabilité d'homicide involontaire coupable.

La provocation peut être alléguée de concert avec la légitime défense lorsqu'on fait valoir que la provocation qui a mené au meurtre est une confrontation physique ou un autre comportement menaçant par la victime qui a entraîné une combinaison de peur et de colère chez l'accusé.

En vertu des réformes proposées, les infractions de menace et les infractions violentes pourraient toujours être considérées comme de la provocation, étant donné que ces infractions sont punissables d'une peine d'au moins cinq ans d'emprisonnement. Si la légitime défense est alléguée et échoue, par exemple parce que la force utilisée était excessive, la défense de provocation pourrait convenir relativement à l'accusation de meurtre.

20. Are there other criticisms of the defence of provocation that this reform would also address?

The provocation defence has been criticized for many decades, by many commentators, and on many grounds. Most importantly, it has been criticized for:

- excusing angry homicidal violence, including gender-based violence arising out of sexual jealousy or termination of a relationship;
- assuming that ordinary citizens can be provoked to kill in a wide variety of non-threatening circumstances;
- blaming the victim in part for provoking their death;

- failing to uphold the personal responsibility of someone who has committed murder; and
- being extremely complex, leading to many appeals on the basis of errors in judicial interpretation of the defence or in instructions to juries.

The proposed reforms address many of these issues. By limiting the circumstances in which the victim's conduct can support a defence to murder, the reforms would address the most problematic provocation cases by: (1) no longer blaming the victim for causing their own death as result of making personal choices; (2) better upholding personal responsibility for those who respond to insult with murderous violence; (3) providing a more realistic foundation for the sorts of conduct that could potentially cause the ordinary person to lose self-control; and (4) simplifying the law.

20. Y a-t-il d'autres critiques à l'égard de la défense de provocation auxquelles cette réforme répond?

Depuis des décennies, de nombreux observateurs ont critiqué la défense de provocation et ce, pour de nombreuses raisons. Elle a été critiquée surtout pour les raisons suivantes :

- excuser la violence meurtrière alimentée par la colère, dont la violence fondée sur le sexe découlant de la jalousie sexuelle ou de la fin d'une relation;
- présumer que les citoyens ordinaires peuvent être poussés à tuer dans un vaste éventail de circonstances non menaçantes;
- blâmer en partie la victime d'avoir provoqué sa mort;
- défaut de tenir personnellement responsable une personne qui a commis un meurtre;
- étant donné qu'elle est extrêmement complexe, elle peut donner lieu à de nombreux appels en raison d'erreurs dans l'interprétation judiciaire de cette défense ou les directives données aux jurys.

Les réformes proposées règlent bon nombre de ces problèmes. En limitant les circonstances dans lesquelles la conduite de la victime peut justifier un moyen de défense au meurtre, les réformes régleraient les cas de provocation les plus problématiques des façons suivantes : (1) en cessant de blâmer la victime d'avoir causé sa propre mort par ses choix personnels; (2) en arrivant à mieux tenir personnellement responsables ceux qui répondent à une infraction et à des insultes par une violence meurtrière; (3) en donnant un fondement plus réaliste quant aux types de comportements qui pourraient pousser une personne ordinaire à perdre son sang-froid; et (4) en simplifiant la loi.

21. Do other jurisdictions where the provocation defence exists face the same concerns and criticisms?

All common law jurisdictions with a provocation defence have faced the same criticisms and concerns.

In the past decade, most jurisdictions have either abolished or limited their provocation defences. Three Australian states have abolished the provocation defence entirely, along with New Zealand. Earlier in 2014, the Australian state of New South Wales passed legislation similar to what is proposed in this Bill, namely limiting the provocation defence to conduct by the victim that amounts to an indictable offence punishable by at least 5 years in prison.

Three other Australian states have limited their provocation defences in other ways, such as by expressly identifying certain forms of conduct by the victim that cannot be provocation, such as a non-violent sexual advance, or by setting a higher threshold where the victim's conduct involved ending or changing the nature of a domestic relationship. Only one Australian state retains the full provocation defence at common law.

The United Kingdom abolished the provocation defence in 2009, but at the same time replaced it with a new and similar partial defence called the defence of "loss of self-control," with an elevated threshold that requires the conduct of the victim to be "of an extremely grave nature". The new UK law also expressly ruled out the defence where the cause of the accused's loss of self-control was sexual infidelity on the part of the victim.

21. Les autres administrations dans lesquelles la défense de provocation existe sont-elles confrontées aux mêmes préoccupations et critiques?

Toutes les administrations de common law ayant une défense de provocation ont été confrontées aux mêmes critiques et préoccupations.

Au cours de la dernière décennie, la plupart des administrations ont aboli ou limité leur défense de provocation. Trois États australiens ont aboli la défense de provocation dans son ensemble, de même que la Nouvelle-Zélande. Plus tôt en 2014, l'État australien de la Nouvelle-Galles du Sud a adopté une mesure législative semblable à ce qui est proposé dans le présent projet de loi, à savoir de limiter la défense de provocation aux comportements par la victime qui constituent un acte criminel punissable d'une peine d'au moins cinq ans d'emprisonnement.

Trois États australiens ont limité leurs défenses de provocation d'autres façons, comme en précisant certaines formes de comportements par la victime qui ne peuvent être considérés comme de la provocation, comme des avances sexuelles sans violence, ou en fixant un seuil plus élevé lorsque le comportement de la victime comportait le fait de mettre fin à une relation de couple et d'en changer la nature. Un seul État australien conserve la pleine défense de provocation en common law.

Le Royaume-Uni a aboli la défense de provocation en 2009, mais parallèlement l'a remplacée par une nouvelle défense partielle semblable appelée défense de « perte de la maîtrise de soi », à laquelle est associé un seuil plus élevé qui exige que le comportement de la victime soit « d'une nature extrêmement grave ». La nouvelle loi du Royaume-Uni exclut également expressément la défense lorsque la cause de la perte de maîtrise de soi de l'accusé était l'infidélité sexuelle de la part de la victime.

22. Why does the Bill not amend the provocation defence to state that it cannot be raised in “honour” killing cases?

There would be a number of challenges associated with expressly limiting the provocation defence so that it would not apply in so-called “honour” killing cases. First, it would be extremely difficult to define an “honour” killing or the circumstances that would be excluded from being provocation. Second, such a limitation would do nothing to stop the defence from being raised in the very similar and equally troubling cases where a person kills their spouse for having terminated the relationship or for infidelity or verbal taunts and insults, but where the circumstances cannot be characterized as an “honour” killing. Third, there is some evidence from the United Kingdom that expressly excluding certain types of conduct may not be effective. In 2009, the UK abolished provocation and created a replacement defence of “loss of control” in response to conduct of an “extremely grave nature”. They expressly excluded this defence from applying where the alleged conduct was sexual infidelity. Nonetheless, at least one court has already found that the defence could succeed where the source of the accused's anger was sexual infidelity coupled with verbal taunts.

22. Pourquoi le projet de loi ne modifie-t-il pas la défense de provocation pour préciser qu'elle ne peut être invoquée dans des affaires de crimes d'« honneur »?

Il y aurait un certain nombre de défis associés au fait de limiter expressément la défense de provocation de sorte qu'elle ne puisse s'appliquer dans les affaires de soi-disant crime d'« honneur ». Tout d'abord, il serait extrêmement difficile de définir un crime d'« honneur » ou les circonstances qui ne pourraient être considérées comme de la provocation. Deuxièmement, une telle limite n'empêcherait aucunement que l'on invoque

cette défense dans les affaires très semblables et tout aussi troublantes que sont celles dans lesquelles une personne tue son conjoint qui a mis un terme à la relation ou qui a été infidèle ou encore pour ses moqueries et ses insultes, mais pour lesquelles les circonstances ne peuvent être qualifiées de crime d'« honneur ». Troisièmement, il semble qu'au Royaume-Uni le fait d'exclure expressément certains types de comportements ne soit pas efficace. En 2009, le Royaume-Uni a aboli la défense de provocation et a créé la défense de remplacement de « perte de la maîtrise de soi » en réponse à un comportement de « nature extrêmement grave ». Cette défense a été expressément exclue lorsque le comportement allégué était l'infidélité sexuelle. Toutefois, au moins un tribunal a déjà conclu que la défense pouvait être fructueuse lorsque la source de la colère de l'accusé était l'infidélité sexuelle associée à des moqueries.

CONSEQUENTIAL AMENDMENTS

MODIFICATIONS CORRÉLATIVES

1. Why are these consequential amendments included in the bill?


In order for a person who breaches the new forced or early marriage peace bond provisions in the *Criminal Code* (section 810.02) to be lawfully held in a provincial jail, it must be included in the list of other peace bonds in subsection 2(1) of the *Prisons and Reformatories Act*.


The amendments to the *Youth Criminal Justice Act* are necessary to ensure that the new forced or early marriage peace bond provisions in the *Criminal Code* (section 810.02) can be applied to and enforced against youth between the ages of 12 and 18 years of age.

1. Pourquoi ces modifications corrélatives sont-elles comprises dans le projet de loi?

Pour qu'une personne qui ne respecte pas les nouvelles dispositions du *Code criminel* (810.02) relatives à l'engagement de ne pas troubler l'ordre public dans les cas de mariage forcé ou précoce puisse être détenue légitimement dans une prison provinciale, l'engagement doit être inclus dans la liste des autres engagements de ne pas troubler l'ordre public figurant au paragraphe 2(1) de la *Loi sur les prisons et les maisons de correction*.



Des modifications à la *Loi sur le système de justice pénale pour les adolescents* sont nécessaires pour que les nouvelles dispositions du *Code criminel* (810.02) relatives à l'engagement de ne pas troubler l'ordre public dans les cas de mariage forcé ou précoce puissent être appliquées à l'encontre de jeunes âgés entre 12 et 18 ans.

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***Zero Tolerance for
Barbaric Cultural
Practices Act***


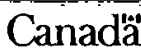


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The Zero Tolerance for Barbaric Cultural Practices Act

- In the 2013 Speech from the Throne, the Government committed to strengthening efforts to prevent early and forced marriage and other harmful cultural practices from happening in Canada.
- This presentation will explain why changes are needed to better protect and support vulnerable Canadians, particularly immigrant women and girls, from such practices.

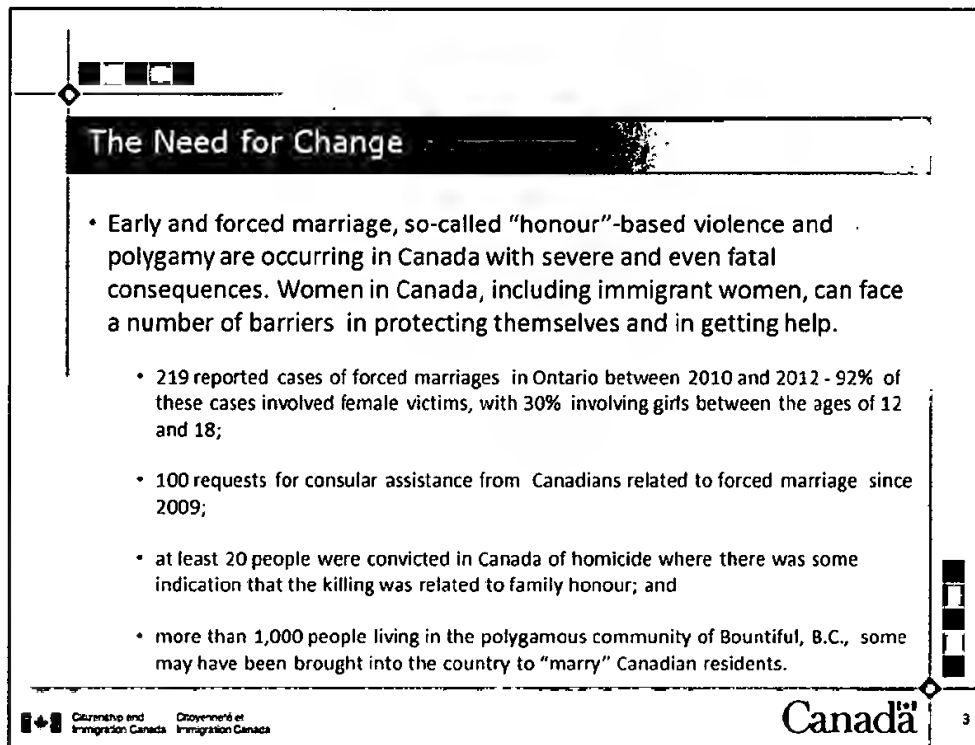
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Good afternoon,

The purpose of this technical briefing is to provide you with background information on the *Zero Tolerance for Barbaric Cultural Practices Act*, which Senator Ataullahjan will be tabling later today.


Today's presentation will :

1. explain why changes are needed;
2. provide an overview of the proposed changes which will strengthen our laws by:
 - making it clear that underage and forced marriages are not accepted under both marriage and criminal law;
 - introducing more legal protections for potential victims of early and forced marriage; and
 - barring entry to permanent or temporary residents who practise or intend to practise polygamy in Canada.
3. highlight other key federal initiatives that are better protecting vulnerable women and girls, both at home and abroad.



The Need for Change

- Early and forced marriage, so-called "honour"-based violence and polygamy are occurring in Canada with severe and even fatal consequences. Women in Canada, including immigrant women, can face a number of barriers in protecting themselves and in getting help.
- 219 reported cases of forced marriages in Ontario between 2010 and 2012 - 92% of these cases involved female victims, with 30% involving girls between the ages of 12 and 18;
- 100 requests for consular assistance from Canadians related to forced marriage since 2009;
- at least 20 people were convicted in Canada of homicide where there was some indication that the killing was related to family honour; and
- more than 1,000 people living in the polygamous community of Bountiful, B.C., some may have been brought into the country to "marry" Canadian residents.

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In the 2013 Speech from the Throne, the Government committed to taking steps to ensure that early and forced marriages, and other forms of barbaric cultural practices, do not happen in Canada.


To better understand how to address these forms of violence, Minister Alexander held roundtable discussions with representatives of organizations that provide services to immigrant women and victims of abuse. Many of these same groups also appeared before the House of Commons Standing Committee on Citizenship and Immigration, which is studying how to strengthen protection for immigrant women. What we heard is that, when compared to Canadian-born women, newcomer and immigrant women face additional barriers in protecting themselves and in seeking assistance. These barriers include isolation; lack of language proficiency; lack of awareness of their rights; fear of immigration consequence; lack of financial independence; and concerns about retaliation for seeking help or alerting authorities of their abusive situations.

While incidents of early and forced marriage and forms of violence often go unreported, the statistics on the screen give an indication of what is happening.

- A 2013 report by the South Asian Legal Clinic of Ontario found 219 cases of forced marriage in Ontario between 2010 and 2012. All the victims had experienced some form of violence.
- At least 20 people were convicted in Canada of homicide where there was some indication that the killing was related to family honour; the vast majority of these cases occurred in the past 15 years.

The cases that have gained public attention speak to the personal and societal losses associated with these harmful cultural practices. These practices go against Canadian values, cause harm to women and girls, and prevent their full participation in society.

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Early & Forced Marriage: *Civil Marriage Act* Amendments


Current Status:


- No national minimum age for marriage in Canada.
- In Quebec, federal legislation (age 16). Elsewhere, common law minimum age between 7 and 14. PTs have set additional requirements for marriages under the age of majority (18 or 19) (e.g. for parental consent or court approval).

Amendments are proposed to the *Civil Marriage Act* to:

- codify requirements for free and enlightened consent and dissolution of previous marriage; and
- set a national minimum marriage age of 16.



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The practice of early and forced marriage goes against Canadian values and has serious, lifetime negative consequences for those affected by it.

There is currently no national minimum age for marriage in Canada below which no marriage may be legally contracted. Federal legislation applicable only in Quebec sets the minimum age at 16. Elsewhere in Canada, the common law (court decisions) is unclear but appears to set the minimum age as 12 for girls and 14 for boys, or in some cases as low as age 7. The PTs provide for additional requirements for marriages under the age of majority (18 or 19), such as parental consent or court approval.

Setting a national minimum age sends a strong message that marriages should not occur in Canada below the age of 16 under any circumstance. It is consistent with the current federal law applicable in Quebec. It also provides some flexibility to accommodate the current practice in Canada in exceptional cases of mature minors aged 16 and above who, for example, wish to marry where they have a child together.

The Minister of Justice is also working with his PT counterparts to examine whether parental consent for these exceptional marriages of minors can be accompanied by court oversight to avoid any possibility of forced marriages.


Unlike arranged marriages where the families of both spouses take a leading role, but both individuals have a final say about whether to enter into the marriage, forced marriages occur where one or both spouses do not give their free and enlightened consent to be married. Family members sometimes use emotional coercion, threats, physical violence, abduction, forcible confinement or extortion to force the person into the marriage.

As well, to help prevent forced marriages from occurring in Canada, proposed changes would codify, as a national standard, the existing requirement for free and enlightened consent of both parties. This requirement currently exists in federal law for Quebec and in the common law for the rest of Canada.

Finally, the proposed changes would also codify, as a national standard, the current legal requirement that a person must dissolve one marriage, through death or court order, before entering a second marriage. This requirement currently exists in federal law for Quebec, and in the common law for the rest of Canada and would complement the current requirement for monogamy in the *Civil Marriage Act*,

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as well as the *Criminal Code*
prohibitions on bigamy and
polygamy.




Early & Forced Marriage: *Criminal Code* Amendments

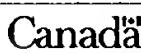
Current Status:

- Existing *Criminal Code* provisions already cover the use or threats of force typically used to make a person marry against their will.

Proposed amendments

- Proposed amendments would fill gaps in the law by criminalizing:
 - Knowingly officiating an early or forced marriage;
 - Knowingly and actively participating in a wedding ceremony in which one party is marrying against their will or is under 16; and
 - The removal of a child from Canada for a forced or early marriage.
- In addition, amendments are proposed to create a forced or early marriage peace bond to prevent these crimes from happening; breaching the new peace bond would be a crime.

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- Many crimes related to forced marriage are already covered in the *Criminal Code*. However, some gaps remain. Building on the proposed amendments to the *Civil Marriage Act*, the bill would also amend the *Criminal Code* to provide additional protections to prevent forced or underage marriages.
- The proposed amendments would:
 - Amend the existing offence for a legally-authorized officiant who knowingly solemnizes a marriage contrary to provincial law to clarify that this also includes a marriage that is contrary to federal law, including a forced or underage marriage— this offence is punishable by up to two years in prison;
 - Create two new offences prohibiting the active and knowing participation in a forced or underage marriage ceremony by any person, including parents or other family members of the person being forced to marry, or the performance of a forced or underage marriage ceremony, whether or not the person is legally authorized to solemnize a marriage - these offences would be punishable by a maximum of five years' imprisonment;
 - Expand the existing offence of removing a child from Canada for the purpose of having certain offences committed abroad to include the removal of a child for the purpose of a forced or underage marriage outside of Canada – this offence is punishable by a maximum of five years' imprisonment; and
 - Introduce a new peace bond that gives the court power to impose conditions on a person where there are reasonable grounds to fear that a forced or underage marriage will otherwise occur. Peace bonds could be used to require passport surrenders, as well to

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prevent a child from being taken out of the country.

"Honour" - based Violence

- So-called "honour"- based violence is perpetrated against family members perceived to have brought shame or dishonour to the family.

Current Status:

- Existing *Criminal Code* provisions cover all criminal conduct associated with "honour" -based violence, including assault, threats, forcible confinement, criminal harassment, homicide, counselling suicide.
- For sentencing, the existing "aggravating circumstances" in the *Code* already apply to "honour"- based violence.



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- So-called "honour"- based violence is violence perpetrated against a family member, usually female, perceived to have brought shame or dishonour to the family.
- Violence, in various forms, is motivated by a desire to restore honour thought to have been damaged through "unacceptable" conduct, such as refusing an arranged marriage, or dating.
- "Honour"-based violence is usually premeditated and committed with some degree of approval from family or community members.

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"Honour" - based Violence: *Criminal Code* Amendment


- The defence of provocation has been raised in several cases of so-called "honour" killings in Canada. Though unsuccessful to date, the availability of the defence sends the message that killing in anger in response to insulting or offensive behaviour mitigates murder.

Proposed Amendments:

- The bill proposes to limit the defence so that it would only apply where the victim's conduct that "provoked" the killing constituted a criminal offence punishable by at least 5 years in prison. This would ensure that killings in response to perceived insulting, offensive or disrespectful conduct never mitigates an "honour" killing or other similar killings.



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Under section 232 of the *Criminal Code*, the defence of provocation can be raised by an accused charged with murder, and where successful, it produces an acquittal for murder but a conviction for manslaughter even though the killing legally amounts to murder.

Manslaughter carries a maximum sentence of life in prison, but no minimum term of incarceration (unless a firearm is used, in which case the mandatory minimum sentence is 4 years.) Second degree murder, by contrast, carries a sentence that is largely fixed by law: it is punishable by a mandatory life sentence and parole ineligibility of between 10 and 25 years.

Currently, the defence will succeed where an accused killed after having lost control due to a sudden "wrongful act or insult" by the victim. The "wrongful act or insult" by the victim can be words or gestures that are lawful, as long as it is by the victim, unexpected, and "sufficient to deprive an ordinary person of the power of self-control". Also, the accused must have killed while in the "heat of passion".

The defence of provocation has been raised in several so-called "honour" killing cases in Canada, although to date, no claim has been successful. The alleged provoking conduct in these cases was real or perceived marital infidelity and other forms of perceived disrespect, defiance or insulting words on the part of the victim toward her husband or her father/family, given their cultural backgrounds.

The proposed amendment would limit the circumstances in which a person can claim provocation where they murdered another person by replacing the extremely broad notion of "a wrongful act or insult" with a narrower class of conduct, namely conduct of the victim that amounted to a criminal offence punishable by at least 5 years in prison. No matter how insulting or offensive another person finds it, conduct of the victim that is lawful and which expresses their personal choices such as insulting words or gestures and the exercise of personal choices about lifestyle and dating or marriage partners, should not excuse homicidal violence.

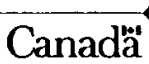



Polygamy

- Polygamy is defined as a form of marriage involving more than two people and is an offence under the *Criminal Code*.

Current Status:

- Non-citizens who practise polygamy in Canada may be found inadmissible if convicted or if there is a finding of misrepresentation.
- Non-citizens who practise polygamy abroad must stop practising polygamy and will only be permitted to immigrate with one monogamous spouse.


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Currently there are limited authorities provided under the *Immigration and Refugee Protection Act* to prevent polygamy from occurring on Canadian soil.

In the permanent resident stream, foreign nationals applying for permanent residence cannot be practising polygamy. This requires an individual who is practising polygamy to either convert their polygamous marriage to a monogamous one, or to divorce all of their spouses and to marry only one spouse.


However, under the current immigration law, non-citizens can only be removed in cases where there is a criminal conviction for practising polygamy, or where there is a finding of misrepresentation because they lied about the number of spouses the individual had at the time of their application.


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Polygamy: Immigration and Refugee Protection Act Amendment

- **The bill proposes** to enhance existing immigration tools to prevent non-citizens practising polygamy from coming to or staying in Canada by:
 - specifying that temporary residents and permanent residents are inadmissible for practising polygamy in Canada.
- This will enable the refusal of visa applications or allow removal orders to be made against those who are determined to be inadmissible.
- Visitors who practise polygamy legally in their home country could only enter Canada if travelling without any spouse.



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The proposed amendments to IRPA would:

- Allow officers to deny visas when, on balance, they have sufficient grounds to find that the applicant will be practising polygamy in Canada; and
- Allow the Immigration Division to make a finding of inadmissibility against a temporary resident or permanent resident where the Board has, on balance, sufficient credible evidence that they are or will be practising polygamy in Canada. A finding of misrepresentation or criminality will not be needed. If found inadmissible, the person could be issued a removal order.


Visitors (who practise polygamy legally in their home country) would only be permitted to travel to Canada alone, i.e., without any of their spouses.


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Coming into Force

- Amendments to the *Immigration and Refugee Protection Act* and to the *Criminal Code* will come into force on a day to be fixed by order of the Governor in Council.
- Amendments to the *Civil Marriage Act* will come into force upon Royal Assent.




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Certain provisions will come into force on a date to be set by the Governor in Council as these items require regulations to support their effective implementation.


For example, amendments to the Immigration and Refugee Protection Regulations would be needed to specify the type of removal order issued in cases where a person is found to be inadmissible.


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Other Federal Initiatives

- The bill would complement other government initiatives that are protecting and supporting vulnerable women and girls.
- Internationally, Canada has made ending child, early and forced marriage a foreign policy and development priority, with many successful initiatives underway.
- Domestically, the government is working with PTs and non-governmental partners to provide support, protection and services for immigrant women and girls.



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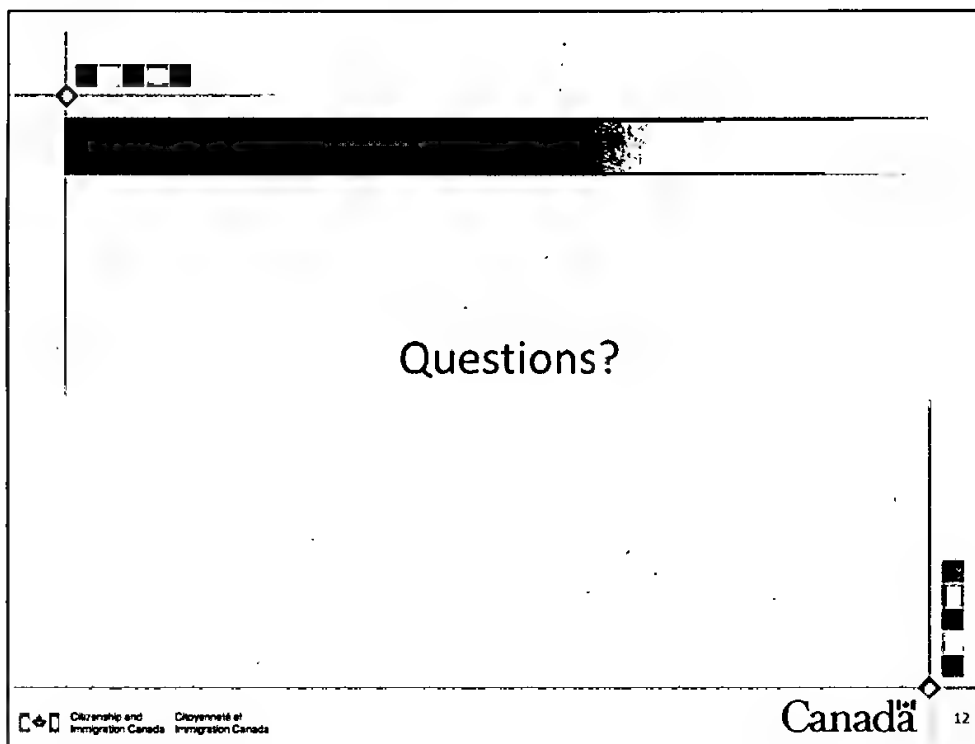
Canada is spearheading efforts internationally to put an end to early and forced marriages and other harmful cultural practices. These efforts include contributing \$20 million to UNICEF in support of programs aimed at ending child, early and forced marriage in several countries where these practices are prevalent.

The Government is working with PTs and non-governmental organizations to provide support, protection and services for immigrant women and girls. For example, Canadian missions provide people immigrating to Canada, including women, with information about their rights and living in Canada. Once in Canada, women can access a range of support and services, such as women's only language classes; skills development and job training; counselling and referrals to other social agencies.


A number of federal government departments provide funding to support projects that address forced marriage and "honour" -based violence. As well, specific training and workshops on these topics are being offered to frontline professionals, including police and RCMP officers, crown attorneys, victim services, child protection officials, shelter workers and health care workers.

The *Zero Tolerance for Barbaric Cultural Practices Act* complements these efforts and will help better protect and support vulnerable immigrant women and girls. The Bill also sends a clear message to those coming to this country that harmful cultural practices are unacceptable and will not be tolerated.

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Questions?

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***Loi sur la tolérance
zéro face aux
pratiques culturelles
barbares***





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La Loi sur la tolérance zéro face aux pratiques culturelles barbares

- Dans le discours du Trône de 2013, le gouvernement s'est engagé à redoubler d'efforts pour empêcher la tenue de mariages précoces et forcés au Canada, ainsi que toute autre forme de pratique culturelle préjudiciable.
- La présentation d'aujourd'hui a pour but d'expliquer pourquoi il est nécessaire d'apporter des changements afin de mieux protéger et d'aider les Canadiens et Canadiennes vulnérables, en particulier les femmes et jeunes filles immigrantes, et d'éviter qu'elles soient victimes de telles pratiques.



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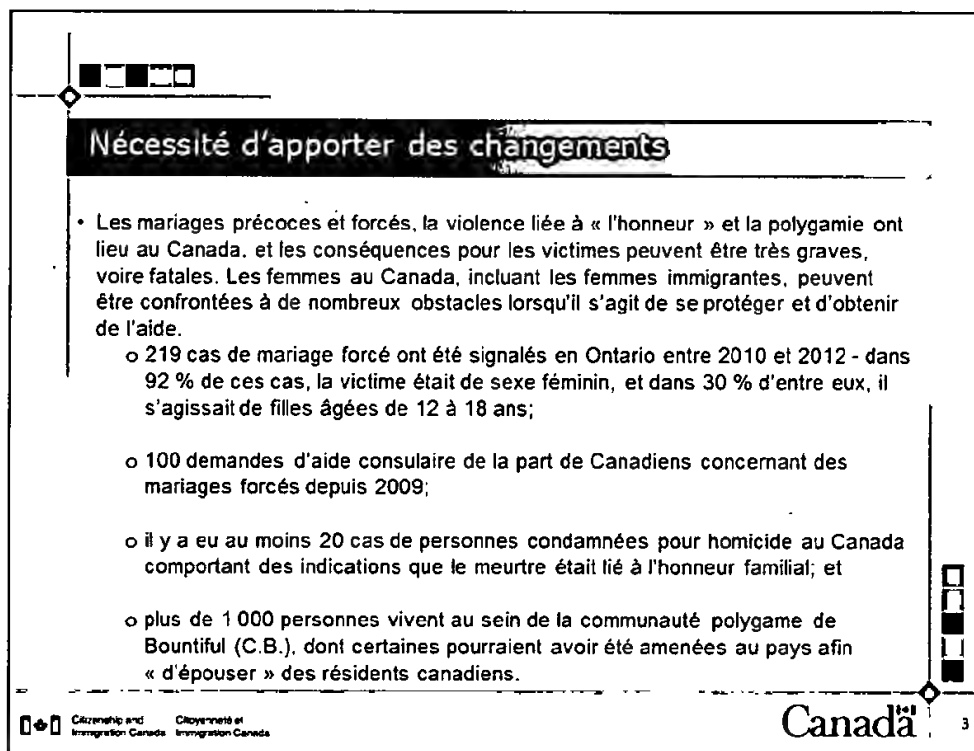
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Bon après-midi,

La présente séance d'information technique vise à vous fournir des renseignements généraux sur la *Loi sur la tolérance zéro face aux pratiques culturelles barbares*, que le sénateur Ataullahjan déposera aujourd'hui.



La présentation d'aujourd'hui a pour but :


1. d'expliquer pourquoi il est nécessaire d'apporter des changements;
2. de fournir un aperçu des changements proposés, lesquels renforceront nos lois en :
 - clarifiant que le mariage d'enfants et le mariage forcé ne sont pas acceptés en vertu des lois pénales et des lois sur le mariage;
 - mettant en place davantage de mesures de protection juridique pour les victimes potentielles de mariage précoce et forcé;
 - interdisant l'entrée au Canada aux résidents permanents ou temporaires qui pratiquent ou qui ont l'intention de pratiquer la polygamie au Canada.
3. de faire ressortir les autres initiatives fédérales clés qui permettent de mieux protéger les femmes et jeunes filles vulnérables, tant au pays qu'à l'étranger.



Nécessité d'apporter des changements

- Les mariages précoces et forcés, la violence liée à « l'honneur » et la polygamie ont lieu au Canada, et les conséquences pour les victimes peuvent être très graves, voire fatales. Les femmes au Canada, incluant les femmes immigrantes, peuvent être confrontées à de nombreux obstacles lorsqu'il s'agit de se protéger et d'obtenir de l'aide.
 - 219 cas de mariage forcé ont été signalés en Ontario entre 2010 et 2012 - dans 92 % de ces cas, la victime était de sexe féminin, et dans 30 % d'entre eux, il s'agissait de filles âgées de 12 à 18 ans;
 - 100 demandes d'aide consulaire de la part de Canadiens concernant des mariages forcés depuis 2009;
 - il y a eu au moins 20 cas de personnes condamnées pour homicide au Canada comportant des indications que le meurtre était lié à l'honneur familial; et
 - plus de 1 000 personnes vivent au sein de la communauté polygame de Bountiful (C.B.), dont certaines pourraient avoir été amenées au pays afin « d'épouser » des résidents canadiens.

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Dans le discours du Trône de 2013, le gouvernement s'est engagé à prendre des mesures pour veiller à ce que les mariages précoces et forcés, et toute autre forme de pratique culturelle barbare, n'aient pas lieu au Canada.

Pour mieux comprendre comment s'attaquer à ces formes de violence, le ministre Alexander a tenu des discussions en table ronde avec les représentants d'organismes qui offrent des services aux femmes immigrantes et aux victimes d'abus. Nombre de ces mêmes organismes se sont présentés devant le Comité permanent de la citoyenneté et de l'immigration de la Chambre des communes, dont les membres sont à étudier la manière d'accroître la protection des femmes immigrantes. D'après ce que nous avons entendu, en comparaison avec les femmes nées au Canada, les femmes nouvelles arrivantes et immigrantes sont confrontées à des obstacles additionnels lorsqu'il s'agit de se protéger et d'obtenir de l'aide. Ces obstacles comprennent l'isolement, le manque de maîtrise du français ou de l'anglais, le fait que les femmes ignorent leurs droits, la crainte des conséquences pour leur statut au Canada, le manque d'indépendance financière, et la peur de faire l'objet de représailles pour avoir cherché à obtenir de l'aide ou avoir informé les autorités de leur situation de violence.

Bien qu'il arrive souvent que des incidents de mariage précoce et forcé et des types de violence ne soient pas signalés, les statistiques à l'écran nous donnent une idée de ce qui se déroule.

- Un rapport de 2013 produit par la *South Asian Legal Clinic* de l'Ontario a dénombré 219 cas de mariage forcé en Ontario entre 2010 et 2012. Dans tous les cas, les victimes avaient été l'objet d'un type ou l'autre de violence.
- Il y a eu au moins 20 cas de personnes condamnées pour homicide au Canada comportant des indications que le meurtre était lié à l'honneur familial; la grande majorité de ces cas se sont produits au cours des 15 dernières années.

Les cas ayant suscité l'attention du public témoignent des pertes personnelles et sociétales associées à ces pratiques culturelles préjudiciables. Ces dernières vont à l'encontre des valeurs canadiennes et causent du tort aux femmes et aux filles en les empêchant de participer pleinement à la société.

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Mariage précoce et forcé : Modifications à la *Loi sur le mariage*

A l'heure actuelle

- Il n'y a pas d'âge minimum pour le mariage au Canada.
- Au Québec, législation fédérale (16 ans). Partout ailleurs, l'âge minimum en vertu de la common law varie entre 7 et 14 ans. Les PT ont prévu des exigences additionnelles pour les mariages de personnes n'ayant pas atteint l'âge de la majorité (18 ou 19 ans) (p. ex. le consentement des parents ou l'approbation des tribunaux).

Des modifications sont proposées à la *Loi sur le mariage civil* pour :

- codifier les exigences liées au consentement libre et éclairé et à la dissolution du mariage précédent;
- fixer à 16 ans l'âge minimum national pour le mariage.

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La pratique des mariages précoces et des mariages forcés va à l'encontre des valeurs canadiennes, et les personnes touchées subissent de graves conséquences tout au long de leur vie.

Il n'y a actuellement aucun âge national minimum au Canada sous lequel un mariage ne peut être contracté légalement. La législation fédérale applicable seulement au Québec établit l'âge minimum à 16 ans. Ailleurs au Canada, la common law (décisions de la Cour) ne donne pas d'indications claires, mais semble établir l'âge minimum à 12 ans pour les filles et à 14 ans pour les garçons, et même, dans certains cas, à 7 ans. Les PT imposent des exigences additionnelles pour les mariages entre personnes âgées de moins de 18 ou de 19 ans, comme le consentement des parents ou une approbation de la Cour.

L'établissement d'un âge national minimum envoie un message fort selon lequel aucun mariage de personnes de moins de 16 ans ne devrait être contracté au Canada, et ce, en aucune circonstance. Cela est conforme à la loi fédérale actuelle applicable au Québec. Cela fournit également une certaine souplesse pour permettre la pratique actuelle au Canada dans certains cas exceptionnels, par exemple lorsque des mineurs matures âgés de 16 ans et plus désirent se marier, notamment lorsqu'un enfant est né de leur union.

Le ministre de la Justice collabore également avec ses homologues des PT à l'examen de la question selon laquelle le consentement des parents à ces mariages exceptionnels entre mineurs pourrait être supervisé par la Cour en vue d'éviter tout mariage forcé potentiel.

Contrairement aux mariages arrangés à l'égard desquels les familles des deux époux prennent l'initiative, mais où les deux personnes décident librement s'ils veulent ou non se marier, les mariages forcés surviennent quand l'un des époux ou les deux époux ne donnent pas un consentement libre et éclairé. Des membres de la famille ont parfois recours au chantage émotionnel, à des menaces, à la violence physique, à l'enlèvement, à la séquestration ou à l'extorsion pour forcer les personnes à se marier.

Aussi, pour contribuer à prévenir les mariages forcés au Canada, les changements proposés codifieraient, en tant que norme nationale, l'exigence actuelle selon laquelle le consentement libre et éclairé des deux parties doit être donné. Cette exigence existe à l'heure actuelle dans la loi fédérale au Québec et dans la common law pour le reste du Canada.

Enfin, les changements proposés codifieraient également, en tant que norme nationale, l'exigence juridique actuelle selon laquelle une personne ne peut se marier de nouveau tant que son premier mariage n'a pas été dissout à la suite d'un décès ou d'un ordre de la Cour. Cette exigence existe à l'heure actuelle dans la loi fédérale pour le Québec et dans la common law pour le reste du Canada et s'ajouterait à l'exigence actuelle relative à la monogamie dans la *Loi sur le mariage civil*, ainsi qu'aux interdictions prévues dans le *Code criminel* sur la bigamie et la polygamie.

Mariage précoce et forcé : Modifications au *Code criminel*


À l'heure actuelle

- Les dispositions actuelles du *Code criminel* régissent l'utilisation de la force ou la menace d'utiliser la force, qui sont habituellement employées pour forcer une personne à se marier contre son gré.

Modifications proposées

- Les modifications proposées viendraient combler les vides juridiques en criminalisant :
 - le fait de célébrer sciemment un mariage précoce ou forcé;
 - le fait de participer sciemment et activement à une cérémonie de mariage où l'une des parties n'est pas consentante ou est âgée de moins de 16 ans;
 - le fait d'obliger un enfant à quitter le Canada aux fins d'un mariage forcé ou d'un mariage d'enfants dans un autre pays.
- En outre, des modifications sont proposées en vue de créer des « engagements de nonparticipation à tout mariage forcé ou précoce » pour éviter que ces crimes se produisent au Canada; tout manquement à ces engagements constituerait une infraction criminelle.

- De nombreux crimes liés au mariage forcé sont déjà visés par le *Code criminel*. Toutefois, des lacunes subsistent. En s'inspirant des changements proposés à la *Loi sur le mariage civil*, le projet de loi modifierait également le *Code criminel* afin de fournir des protections supplémentaires pour prévenir les mariages forcés ou les mariages sous l'âge minimum.
- Les changements proposés :
 - Modifieraient l'infraction actuelle que constituent les mariages célébrés sciemment à l'encontre de la loi provinciale par un célébrant autorisé légalement pour y clarifier que ceci comprend les mariages célébrés à l'encontre de la loi fédérale et les mariages forcés ou sous l'âge minimum. Cette infraction est passible d'un emprisonnement de deux ans;
 - Créeraient deux nouvelles infractions interdisant la participation active et en toute connaissance de cause à la cérémonie d'un mariage forcé ou sous l'âge minimum de personnes (dont les parents ou d'autres membres de la famille de la personne forcée à se marier), ou la tenue d'une cérémonie d'un mariage forcé ou sous l'âge minimum, que le célébrant soit légalement autorisé ou non. Ces infractions seraient passibles d'un emprisonnement de cinq ans maximum;
 - Élargir l'infraction existante liée au passage à l'étranger d'un enfant résidant habituellement au Canada en vue d'y permettre la commission des infractions contre l'enfant, dont le mariage forcé ou précoce. Cette infraction est passible d'un emprisonnement de cinq ans maximum;
 - Instaurer un nouvel engagement de ne pas troubler l'ordre public en lien avec un mariage forcé ou précoce qui donne à la Cour le pouvoir d'imposer des conditions s'il existe des raisons sérieuses de croire qu'une personne participera à un mariage forcé ou précoce. Ces engagements de ne pas troubler l'ordre public en lien avec un mariage forcé ou précoce pourraient être utilisés pour demander la remise du passeport et pour prévenir l'enlèvement d'un enfant.





Violence « l'honneur »

- La violence liée à « l'honneur » est perpétrée contre un membre de la famille qui est perçu comme ayant fait honte à la famille ou comme l'ayant déshonorée.

À l'heure actuelle


- Les dispositions actuelles du *Code criminel* couvrent toutes les infractions associées à la violence liée à « l'honneur », incluant les voies de fait, les menaces, la séquestration, l'harcèlement criminel, l'homicide et l'incitation à commettre le suicide.
- Pour la détermination de la peine, les « circonstances aggravantes » prévues dans le *Code* s'appliquent déjà à la violence liée à l'honneur.

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- La violence liée à « l'honneur » est perpétrée contre un membre de la famille, habituellement une femme, qui est perçu comme ayant fait honte à la famille ou comme l'ayant déshonorée.
- La violence, sous diverses formes, est motivée par un désir de rétablir l'honneur entaché par un comportement « inacceptable », p. ex. refuser de se plier à un mariage arrangé ou avoir des fréquentations.
- Règle générale, la violence liée à « l'honneur » est préméditée et commise avec un certain niveau d'approbation des membres de la famille ou de la communauté.

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Violence liée à « l'honneur »: Modification au *Code criminel*

- La défense de provocation a été soulevée dans plusieurs cas de meurtres « d'honneur » au Canada. Même si l'argument n'a pas tenu la route à ce jour, la disponibilité de cette défense envoie le message que le fait de commettre un meurtre en réaction à une conduite irrespectueuse ou offensante pourrait être un facteur atténuant dans les affaires de meurtre.

Modifications proposées:

- Le projet de loi propose de limiter la défense afin qu'elle s'applique uniquement aux cas où la conduite de la victime ayant « provoqué » le meurtre constituait une infraction criminelle punissable d'un emprisonnement maximal d'au moins cinq ans. Cela ferait en sorte que la gravité des meurtres d'« honneur » ou autres meurtres en réaction à une insulte présumée ou à une conduite irrespectueuse ou offensante ne soit jamais atténuée.



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Conformément à l'article 232 du *Code criminel*, la défense de provocation peut être invoquée par une personne accusée de meurtre et, s'il elle est retenue, l'accusation peut être réduite et ainsi passer de meurtre à homicide involontaire coupable, même si l'homicide est légalement un meurtre.

L'homicide involontaire coupable est assorti d'une peine maximale d'emprisonnement à perpétuité, mais aucune peine minimale n'y est associée (à moins qu'une arme à feu n'ait été utilisée; dans ce cas, la peine minimale obligatoire est fixée à quatre ans). Par contre, le meurtre au deuxième degré est assorti d'une peine en grande partie fixée par la loi; il est punissable par une peine obligatoire d'emprisonnement à vie et une période d'inadmissibilité à la libération conditionnelle de 10 à 25 ans.

Actuellement, la défense sera retenue lorsqu'un accusé a tué sa victime après avoir perdu la maîtrise de lui-même à la suite d'une « insulte ou une action injuste » de la part de sa victime. Une « insulte ou une action injuste » de la part de la victime peut être des paroles ou des gestes légitimes, tant que l'« insulte ou action injuste » est inattendue, « de nature à priver une personne ordinaire du pouvoir de se maîtriser », et l'accusé doit avoir tué la victime alors qu'il était « dans un accès de colère ».

La défense de provocation a été invoquée dans plusieurs causes de crimes « d'honneur » au Canada, mais à ce jour, elle n'a jamais été retenue. La conduite de provocation alléguée dans ces causes était une infidélité conjugale réelle ou perçue et d'autres formes perçues de non-respect, de détermination à résister ou d'insultes de la part de la victime à l'endroit de son mari, de son père ou de sa famille, compte tenu de l'héritage culturel.

Les modifications proposées limiteraient les circonstances dans lesquelles une personne qui en a tué une autre peut invoquer la provocation, en remplaçant la très vaste notion d'« insulte ou action injuste » par une catégorie plus restreinte de comportements, à savoir tout comportement d'une victime équivalent à une infraction criminelle punissable par au moins cinq ans de prison. Peu importe la façon dont une personne perçoit l'insulte ou l'action injuste, le comportement de la victime qui est légitime et qui exprime ses choix personnels, comme prononcer des paroles ou poser des gestes d'insultes et faire des choix personnels à propos d'un mode de vie, d'un partenaire ou d'un mari ne devrait pas constituer une excuse pour la violence entraînant un homicide.

Polygamie

- La polygamie est une forme de mariage qui implique plus de deux personnes, et constitue une infraction en vertu du *Code criminel*.

À l'heure actuelle

- Les non-citoyens qui pratiquent la polygamie au Canada peuvent être déclarés interdits de territoire s'ils sont reconnus coupables ou s'il est établi qu'ils ont fait de fausses déclarations.
- Les non-citoyens qui pratiquent la polygamie à l'étranger doivent adopter une relation monogame pour pouvoir immigrer au Canada.

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À l'heure actuelle, les pouvoirs conférés par la *Loi sur l'immigration et la protection des réfugiés* permettant d'empêcher la pratique de la polygamie en territoire canadien sont limités.

Dans la catégorie des résidents permanents, les étrangers qui présentent une demande de résidence permanente ne peuvent pas pratiquer la polygamie. Les demandeurs doivent donc convertir leur mariage polygame en un mariage monogame, ou divorcer d'avec tous leurs époux pour en épouser un seul.


Cependant, aux termes de la *Loi* actuelle, les noncitoyens peuvent seulement être renvoyés dans les cas où ils sont déclarés coupables de pratiquer la polygamie, ou s'il est établi qu'ils ont fait de fausses déclarations car ils ont menti au sujet du nombre d'époux/épouses qu'ils avaient au moment de la présentation de leur demande.

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Polygamie : Modifications à la Loi sur l'immigration et la protection des réfugiés

- Le projet de loi propose des modifications visant à améliorer les mécanismes actuels en matière d'immigration de façon à empêcher les noncitoyens qui pratiquent la polygamie de venir au Canada ou d'y séjourner en :
 - précisant qu'il est interdit aux résidents temporaires et permanents de pratiquer la polygamie au Canada.
- Cela permettra de refuser les demandes de visa ou de prendre des mesures de renvoi contre ceux qui sont jugés interdits de territoire.
- Les visiteurs qui pratiquent la polygamie à l'étranger ne seront autorisés à voyager au Canada que s'ils sont seuls, c.à.d. sans aucun de leurs époux.



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Les modifications proposées à la LIPR permettraient :

- à CIC de refuser de délivrer un visa aux demandeurs soupçonnés d'avoir l'intention de pratiquer la polygamie au Canada.
- à la Section de l'immigration de conclure qu'un résident temporaire ou permanent est interdit de territoire quand le Conseil a, selon la prépondérance des probabilités, suffisamment de données probantes selon lesquelles il pratique ou pratiquera la polygamie au Canada. Il ne sera pas nécessaire d'obtenir une conclusion de fausses déclarations ou de criminalité. S'il est jugé interdit de territoire, il pourrait faire l'objet d'une mesure de renvoi.


Cela signifie que les visiteurs (qui pratiquent la polygamie en toute légalité dans leur pays d'origine) ne seraient autorisés à entrer au Canada que s'ils sont seuls, c.à.d. sans aucun de leurs époux.


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Entrée en vigueur

- Les modifications à la *Loi sur l'immigration et la protection des réfugiés* et au *Code criminel* entreront en vigueur à la date fixée par décret du gouverneur en conseil.
- Les modifications à la *Loi sur le mariage civil* entreront en vigueur après avoir reçu la sanction royale.




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Certaines dispositions entreront en vigueur à la date qui sera fixée par le gouverneur en conseil puisque ces dernières nécessitent la prise de règlements pour assurer une mise en œuvre efficace.


À titre d'exemple, il serait nécessaire d'apporter des modifications au *Règlement sur l'immigration et la protection des réfugiés* afin de préciser le type de mesure de renvoi pris contre les personnes déclarées interdites de territoire.


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Autres initiatives fédérales

- Le projet de loi serait complémentaire à d'autres initiatives gouvernementales qui visent à fournir protection et soutien aux femmes et aux filles vulnérables;
- À l'échelle internationale, le Canada a abordé la question du mariage d'enfants, précoce ou forcé dans sa politique étrangère et en a fait une priorité en matière de développement (initiatives fructueuses en cours);
- Au Canada, le gouvernement collabore avec les P et T, ainsi qu'avec des partenaires non gouvernementaux pour fournir soutien, protection et services aux femmes et aux filles immigrantes.





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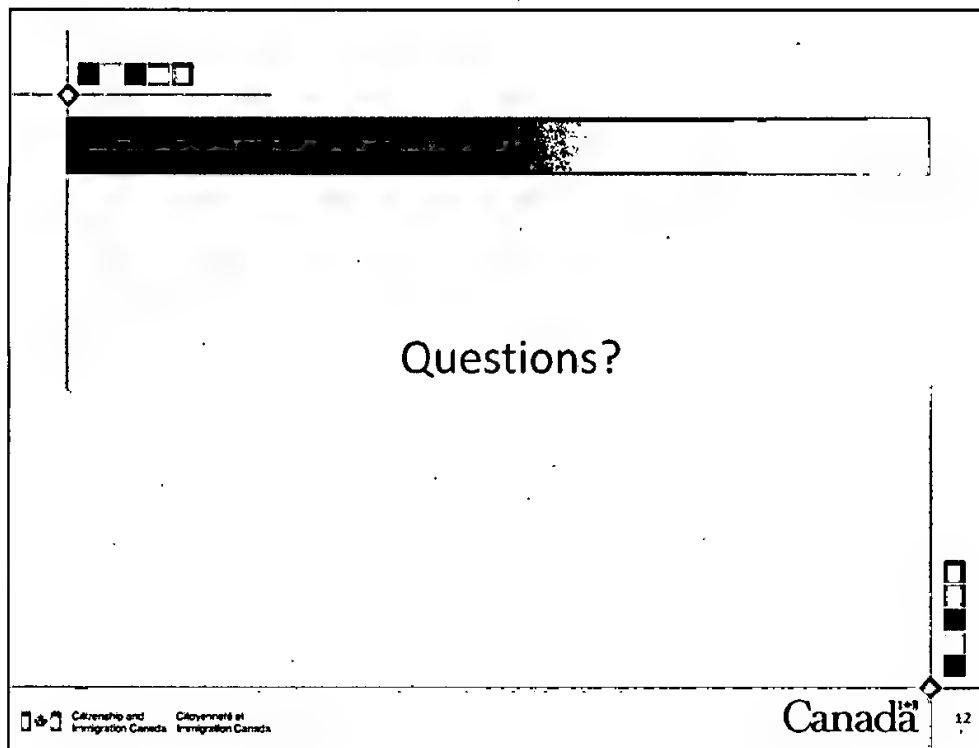
Le Canada dirige des efforts déployés à l'échelle internationale pour faire cesser les mariages précoces et forcés de même que d'autres pratiques culturelles préjudiciables. Parmi ces efforts, on compte une contribution de 20 M\$ à l'UNICEF destinée à appuyer des programmes de lutte contre les mariages précoces ou forcés dans plusieurs pays où ces pratiques sont répandues.

Le gouvernement collabore avec les P et T et les organismes non gouvernementaux pour fournir soutien, protection et services aux femmes et aux filles immigrantes. Par exemple, les missions canadiennes donnent aux personnes qui immigrent au Canada, y compris les femmes, de l'information sur leurs droits et sur la vie au Canada. Une fois qu'elles sont arrivées au Canada, elles ont accès à un éventail de soutien et de services comme des classes de langue pour femmes seulement, le développement de compétences et la formation en cours d'emploi, de l'orientation et la recommandation vers des organismes sociaux.

Bon nombre de ministères fédéraux donnent du financement pour appuyer des projets de lutte contre les mariages forcés et la violence fondée sur « l'honneur ». De plus, de la formation et des ateliers portant tout particulièrement sur ces sujets sont offerts aux professionnels de première ligne, y compris les agents de police et de la GRC, les avocats de la couronne, les personnes qui donnent des services aux victimes, les agents de protection de l'enfance, les travailleurs des refuges et les travailleurs de la santé.

La Loi sur la tolérance zéro face aux pratiques culturelles barbares est le complément de ces efforts et aide à mieux protéger et soutenir les femmes et les filles immigrantes vulnérables. Le projet de loi envoie aussi, aux personnes qui arrivent au pays, un message clair selon lequel les pratiques culturelles préjudiciables sont inacceptables et ne seront pas tolérées.

DRAFT



Savard, Angela

From: McLeod, Ian W (COMMS)
Sent: 2014-Nov-04 2:00 PM
To: [REDACTED]
Cc: Van Loon, Christina
Subject: RE: Zero Tolerance
Attachments: A - News release NR_EFM Bill Tabling_EN_edited.docx; B - BG 1 - Overview of EFM Bill_EN_edited.doc; C - BG 2 - IRPA and Polygamy_EN_edited.docx; E - BG 3 - EFM - OGD initiatives_EN_edited.doc; F - BG 4 - Infograph-current vs new approach_EN_edited.doc; G - MLQAs_EFM Bill tabling_v7_FRE_MINO OK_03NOV14.docx; G - MLQAs_EFM Bill tabling_v7_MINO OK_EN_03NOV14.docx

Here's what I've received from CIC (French to follow for other products).

s.19(1)

Ian W. McLeod
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iwmcLeod@justice.gc.ca
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Facsimile | Télécopieur 613-954-0811
Government of Canada | Gouvernement du Canada

From: McLeod, Ian W (COMMS)
Sent: November-04-14 10:51 AM
To: [REDACTED]
Cc: Van Loon, Christina
Subject: RE: Zero Tolerance

I've just asked CIC for the most recent versions (including updated French versions). I should have them shortly.

Ian W. McLeod
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From: [REDACTED]
Sent: November-04-14 10:44 AM
To: McLeod, Ian W (COMMS)
Subject: RE: Zero Tolerance

Ian, can you send me all the latest products for this svp? Thks!

From: McLeod, Ian W (COMMS)
Sent: Monday, October 27, 2014 5:11 PM
To: [REDACTED]

Cc: [REDACTED] Saville, Suesan; Girouard, Christian; Bolton, Kathy
Subject: RE: Zero Tolerance

s.19(1)

Good afternoon,

We've just received the roll-up of our changes and the CIC ministerial-level changes for final signoff. Please let me know if there are any further concerns ASAP (CIC has marked their changes in Track Changes format, and ours are highlighted in teal).

(They've also discarded the backgrounder on specific cases.)

Many thanks,
Ian

Ian W. McLeod
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For immediate release

Protecting Canada from Barbaric Cultural Practices

November 5, 2014 — Ottawa — Canada's Citizenship and Immigration Minister Chris Alexander today announced that the government tabled a bill that will strengthen our laws to prevent barbaric cultural practices from happening on Canadian soil.

The *Zero Tolerance for Barbaric Cultural Practices Act* sends a clear message to those coming to this country that harmful cultural practices are unacceptable in Canada. These practices are incompatible with Canadian values and will not be tolerated.

The Act would amend the *Immigration and Refugee Protection Act* (IRPA), the *Civil Marriage Act* and the *Criminal Code*. It would provide more protection and support for vulnerable immigrants—primarily women and girls—including:

- Creating a new inadmissibility under IRPA that would render permanent residents and temporary residents inadmissible if they practise polygamy in Canada;
- Strengthening Canadian marriage laws by amending the *Civil Marriage Act* to codify nationally the existing legal requirements for “free and enlightened consent” for marriage and for ending an existing marriage prior to entering another, and to establish a new national minimum age for marriage of 16;
- Helping to protect potential victims of early or forced marriages by creating a new specific court-ordered peace bond where there are grounds to fear that a person would commit a forced or early marriage offence, including mandatory passport surrenders to prevent a child from being taken out of the country;
- Criminalizing certain conduct related to early and forced marriage ceremonies in the *Criminal Code*, including the act of removing a child from Canada for the purpose of such marriages;
- Limiting the defence of provocation so that it would not apply in so-called “honour” killings and many spousal homicides; and
- Including consequential amendments to the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act* to include the new peace bond.

These changes build upon existing federal initiatives that are providing vital support, protection and services for immigrant women and girls.

Quick facts

- Globally, between 2004 and 2014, an estimated 100 million girls will have been forced to marry before their 18th birthday.
- The 2013 *Speech from the Throne* stated that: “Sadly, millions of women and girls continue to be brutalized by violence, including through the inhumane practice of early and forced marriage. This barbarism is unacceptable to Canadians. Our government will take

steps to ensure that it does not occur on our soil."

- For the purposes of this initiative, the term "barbaric cultural practices" encompasses forms of gender-based family violence, such as early, forced and polygamous marriage and "honour"-based violence.
- In 2011, the Supreme Court of British Columbia upheld the constitutionality of the *Criminal Code* prohibition on polygamy (section 293) and found it consistent with the *Canadian Charter of Rights and Freedoms*.

Quotes

"With the *Zero Tolerance for Barbaric Cultural Practices Act*, we are strengthening our laws to protect Canadians and newcomers to Canada from barbaric cultural practices. We are sending a strong message to those in Canada and those who wish to come to Canada that we will not tolerate cultural traditions in Canada that deprive individuals of their human rights. Our government will continue to stand up for all victims of violence and abuse and take necessary action to prevent these practices from happening on Canadian soil."

Chris Alexander, Canada's Citizenship and Immigration Minister

"Our government has been clear on its stance against polygamy and other barbaric practices that constitute gender-based violence. These important legislative changes build on the work that is already being done to make it clear that family violence—including violence committed in the name of so-called "honour"—is absolutely unacceptable. This Act includes important tools to prevent early and forced marriages and to protect victims."

Peter MacKay, Minister of Justice and Attorney General of Canada

"This new legislation reaffirms our Government's leadership efforts in ending violence against women and girls. This includes our investments through Status of Women Canada to give communities the tools they need to end barbaric cultural practices."

Dr. K. Kellie Leitch, Minister of Labour and Minister of Status of Women

"Violence against women and girls is a heinous abuse of power and human rights and has no place in Canadian society. The *Zero Tolerance for Barbaric Cultural Practices Act* sends a clear message that any form of harmful cultural practices is unacceptable and will not be tolerated. I am proud that our government continues to take strong action to ensure the equality, safety and security of women and girls in communities across Canada."

Rona Ambrose, Canada's Health Minister

Related products

Backgrounders:

1 – *Zero Tolerance for Barbaric Cultural Practices Act* – An Overview

- 2 – *Zero Tolerance for Barbaric Cultural Practices Act* – Addressing Polygamy
- 3 – Key federal initiatives protecting and supporting vulnerable women and girls
- 4 – A comparative before and after view of the changes being proposed in the *Zero Tolerance for Barbaric Cultural Practices Act*

Associated links

Citizenship and Immigration Canada:

Welcome to Canada: <http://www.cic.gc.ca/english/resources/publications/welcome/index.asp>

Discover Canada:

<http://www.cic.gc.ca/english/resources/publications/discover/index.asp>

Information for Sponsored Spouses or Partners:

<http://www.cic.gc.ca/english/resources/publications/family-sponsorship.asp>

Department of Justice Canada:

Abuse is Wrong in any language

Department of Foreign Affairs, Trade and Development:

Forced Marriage <http://travel.gc.ca/assistance/emergency-info/forced-marriage>

Photos of Minister Alexander available at:

<http://www.cic.gc.ca/english/department/media/photos/index.asp>

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Contacts

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Media Relations

Department of Justice
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BACKGROUND

Draft

(BG 4) - A comparative before and after view of changes being proposed in the *Zero Tolerance for Barbaric Cultural Practices Act*

BEFORE	AFTER
Polygamy—Current admissibility provisions under the <i>Immigration and Refugee Protection Act</i> (IRPA)	Polygamy—proposed amendments to admissibility provisions under IRPA
<p>Permanent resident In the permanent residency stream, a foreign national, when entering Canada and becoming a permanent resident is permitted to have only one spouse. This requires an individual in a polygamous relationship to convert their marriage to a monogamous relationship.</p> <p>Some permanent resident applicants may try to circumvent the system by taking on an additional spouse at a later date, after they arrive in Canada.</p> <p>In Canada, the permanent resident could only be found inadmissible for practising polygamy if they are convicted in Canada of the criminal offence described under section 293 of the <i>Criminal Code</i> and receive a term of imprisonment of more than six months. A permanent resident may also be found inadmissible for misrepresentation under immigration law, if they lied about being involved in a polygamous relationship when they became a permanent resident.</p>	<p>In the permanent residency stream, a foreign national who practises polygamy would still be required to convert their polygamous marriage to a monogamous one or will be barred from becoming a permanent resident.</p> <p>However, once in Canada, a permanent resident who starts or resumes a polygamous relationship could be found inadmissible on this basis alone, without requiring evidence that the person misrepresented their situation or has a criminal conviction. If found to be inadmissible, the person could then be subject to removal.</p>
<p>Temporary resident A temporary resident who practises polygamy in their country of origin is generally allowed to enter with only one</p>	<p>A foreign national seeking temporary residence will be found inadmissible if they try to enter Canada with even one spouse.</p>

spouse at the time of seeking entry.	
Civil Marriage Act	
<p>Legal requirements to marry The legal requirement for free and enlightened consent to marriage is currently contained in federal legislation that applies in the Province of Quebec only, and in common law (court decisions) for residents of other provinces and territories.</p> <p>The minimum age of 16 for marriage, below which no marriage can be contracted, is currently contained in federal legislation that applies in the Province of Quebec only. For the other provinces and territories, the minimum age is not currently provided for in federal legislation and there is some debate about the minimum age in common law, with some establishing the age at 12 for girls and 14 for boys, and others at age seven for all.</p> <p>The legal clarification that any previous marriage must be dissolved prior to a new marriage is currently contained in federal legislation that applies in the Province of Quebec only. (The requirement for monogamy already exists nationally in section 4 of the <i>Civil Marriage Act</i> and is reflected in sections 290, 291 and 293 of the <i>Criminal Code</i>.)</p>	<p>The legal requirement for free and enlightened consent to marriage would now apply nationally to all Canadian residents.</p> <p>A new national minimum age of 16 for marriage, below which no marriage can be contracted, would now apply to all Canadian residents. Legislation in the provinces and territories may set out additional requirements, such as parental consent and consent of the court, for marriages between the national minimum age and the age of majority.</p> <p>The legal clarification that any previous marriage must be dissolved prior to a new marriage would now apply nationally to all Canadian residents.</p>
Criminal Code	
<p>Early and forced marriage Family members can employ a range of techniques to force a marriage onto an unwilling person, both in the time leading up to the marriage and possibly also in connection with the marriage ceremony itself. Family members may also engage in similar conduct to cause an underage child to marry. Wherever the conduct involved amounts to an existing criminal offence—such as uttering threats, assault or forcible confinement—it is subject to prosecution.</p> <p>Removal of child from Canada In a situation of a forced or early marriage,</p>	<p>Family members and others would be subject to prosecution where they actively and knowingly participate in a forced or early marriage ceremony, such as by transporting an unwilling or underage daughter to the ceremony or acting as a legal witness. A person who knowingly performs a forced or early marriage ceremony would also be subject to prosecution.</p> <p>Family members and others would be subject to prosecution where they take</p>

<p>family members could be prosecuted for taking steps to remove a child from Canada if the Crown could prove that they did so with the knowledge that, following a forced or early marriage ceremony abroad, the child would be subjected to a sexual offence.</p> <p>Peace bond Where there are reasonable grounds to fear that a person—including family members—will cause personal injury to another person, they can be brought to court and ordered to enter into a peace bond (or court order) to keep the peace and be of good behaviour. Other conditions can be imposed, including that the person have no contact with the person who fears for their safety. A person subject to a peace bond could be prosecuted if they breach the order.</p> <p>Provocation defence A person who is found to have committed murder can raise the defence of provocation where they killed the victim in the “heat of passion” brought on by a “wrongful act or insult” from the victim that would be sufficient to cause an ordinary person to lose self-control. Individuals who are prosecuted for murder in so-called “honour” killings can raise the defence, if they allege that the victim’s conduct was so insulting and offensive to them and/or to their family’s reputation that it caused them to kill in a state of rage.</p> <p>Where successful, provocation is a defence for murder that results in a conviction for manslaughter. Manslaughter carries a maximum punishment of life in prison and no minimum punishment except if a firearm was used (four years).</p>	<p>steps to remove a child from Canada specifically with the intent that they be subjected to a forced or early marriage abroad. The Crown would not have to prove that the family knew there would be a sexual offence following the marriage.</p> <p>Where there are reasonable grounds to believe that a person will specifically aid or participate in a forced or early marriage ceremony involving someone else (for example, their child), or will take a young person out of Canada for the purposes of a forced or early marriage ceremony abroad, they could be brought to court and ordered to enter into a peace bond to keep the peace and be of good behaviour. A court would be empowered to make orders that could be particularly useful in specifically preventing an early or forced marriage, whether in Canada or abroad, such as ordering the person to surrender travel documents, to refrain from making arrangements or agreements in relation to the marriage, or to participate in a family violence counselling program.</p> <p>The provocation defence would only be available to an accused found guilty of murder where the conduct of the victim that provoked the accused to kill amounted to a criminal offence punishable by five years or more in prison could qualify.</p> <p>A victim’s personal choices about lifestyle or dating or marriage partners, including where such choices were conveyed in a manner perceived as insulting, could not qualify as provocation for the purposes of providing a defence to murder.</p>
<p>Consequential amendments</p>	
<p>Criminal Code Paragraph 150.1(2.1)(b) of the <i>Criminal Code</i> provides an exception from criminal</p>	<p>The bill proposes to repeal paragraph 150.1(2.1)(b) of the <i>Criminal Code</i>, to match the proposed amendments to the</p>

liability for what would otherwise be the listed sexual offences involving a child between the ages of 14 and 16 years if the complainant and the accused are married.

Prisons and Reformatories Act

Section 2 of the *Prisons and Reformatories Act* provides a definition of "prisoner," which in turn permits such persons to be lawfully held in a provincial jail.

Youth Criminal Justice Act

Subsection 14(2) of the *Youth Criminal Justice Act* gives jurisdiction to a youth justice court to make orders against young persons under the peace bond provisions of the Code.

Subsection 142(1) of the *Youth Criminal Justice Act* provides that the provisions of Part XXVII of the *Criminal Code* apply to proceedings in respect of peace bonds against young persons.

Civil Marriage Act, which will prohibit marriages below the age of 16.

A person who breaches conditions imposed as part of a peace bond, including the new peace bond where there is a fear that they may commit a forced or early marriage offence, could be lawfully held in a provincial jail.

A youth justice court would also have jurisdiction to impose a new peace bond where there is a fear that a young person may commit a forced or early marriage offence.

The new peace bond to prevent forced or early marriage, when ordered against a young person, would be governed by the provisions of Part XXVII of the *Criminal Code* as is the case for other peace bonds.



BACKGROUND

Draft

(BG 1) Zero Tolerance for Barbaric Cultural Practices Act: An Overview

The *Zero Tolerance for Barbaric Cultural Practices Act* demonstrates that Canada's openness and generosity does not extend to early and forced marriage, polygamy or other types of barbaric cultural practices. Canada will not tolerate any type of violence against women or girls, including spousal abuse, violence in the name of so-called "honour", or other, mostly gender-based violence. Those found guilty of these crimes are severely punished under Canada's criminal laws.

To deliver on the government's commitment to standing up for victims of violence and abuse and to send a strong message to those in Canada—and those wishing to come to Canada—that barbaric cultural practices will not be tolerated on Canadian soil, the government is proposing to amend five federal statutes:

Immigration and Refugee Protection Act

Address polygamy through the creation of a new polygamy-specific inadmissibility provision in the *Immigration and Refugee Protection Act*, meaning:

- temporary residents and permanent residents who practise polygamy in Canada could be found inadmissible on that basis alone, without the need for a criminal conviction; and
- if found to be inadmissible, the person could then be subject to removal.

Civil Marriage Act

Make amendments to the *Civil Marriage Act* to:

Legislate across Canada two existing legal requirements for a valid marriage—the requirement for free and enlightened consent (proposed section 2.1) and the requirement for ending an existing marriage prior to entering another (proposed section 2.3). These legal requirements currently exist in federal legislation that applies in the Province of Quebec only (sections 5 and 7 of the *Federal Law–Civil Law Harmonization Act, No. 1*) and in common law (court decisions) for residents of other provinces and territories.

The bill would also establish a new national minimum age for marriage of 16, below which no marriage could be contracted (proposed section 2.2). This legal requirement currently exists only in federal legislation that applies in the Province of Quebec (section 6 of the *Federal Law–Civil Law Harmonization Act, No. 1*). The common law (court decisions) applying to residents

of other provinces and territories is sometimes interpreted as setting a minimum age of 14 for boys and 12 for girls, and historically sometimes as low as age 7. This proposed amendment would provide equal protection to all Canadian children by setting the minimum age to age 16 across Canada.

Additional legal protections for children between the new minimum age for marriage and the age of majority, set by the province or territory of residence at 18 or 19 years of age, are found in provincial and territorial marriage laws. These laws currently require parental consent (and in some instances also the consent of a judge) to ensure that the child fully understands the legal consequences of marriage in those exceptional circumstances where a child would be mature enough to marry. The Minister of Justice Canada has asked his provincial and territorial counterparts to consider making complementary amendments to their marriage laws to ensure that children are uniformly protected by requiring a judge to make the proper inquiries, in addition to parental consent, in the case of any marriage involving a child between the age of 16 and the age of majority.

Criminal Code

Amend the *Criminal Code* to provide additional protections building on the proposed amendments to the *Civil Marriage Act* to prevent forced or underage marriages. The proposed amendments would:

- amend the existing offence for a legally-authorized officiant who knowingly solemnizes a marriage contrary to provincial law (section 295) to clarify that this also includes a marriage that is contrary to federal law, including a forced marriage or a marriage under the age of 16—this offence is punishable by up to two years in prison;
- create a new offence prohibiting the active and knowing participation in a forced marriage ceremony by any person, including parents or other family members of the person being forced to marry, or the performance of a forced marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.1)—this offence would be punishable by a maximum of five years imprisonment;
- create a new offence prohibiting the active and knowing participation in a marriage ceremony involving a person under the age of 16, by any person, including parents or other family members of the person who is underage, or the performance of an underage marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.2)—this offence would be punishable by a maximum of five years imprisonment;
- extend the existing offence of removing a child from Canada for the purpose of having certain offences committed abroad to include the removal of a child for the purpose of a forced marriage or a marriage under the age of 16 outside of Canada (proposed paragraph 273.3(1)(d))—this offence is punishable by a maximum of five years' imprisonment; and
- introduce a new peace bond that gives the court power to impose conditions on a person where there are reasonable grounds to fear that a forced marriage or a marriage under the age of 16 will otherwise occur (proposed section 810.02).

The bill would also amend the *Criminal Code* to address concerns that the defence of provocation (section 232) has been raised in several so-called "honour" killing cases in Canada. In these cases, accused persons who killed their wife, sister or sister's fiancé, alleged that the killing was motivated by their perception that the victims had brought dishonour to them or their family through their conduct or choices, taking into account their culture's views about appropriate gender roles and behaviour.

The defence of provocation currently allows a person found to have committed murder (which carries a mandatory sentence of life in prison and minimum parole ineligibility periods) to seek a conviction of manslaughter instead (with no minimum sentence unless a firearm is used) by arguing that the victim's conduct provoked them to lose self-control and kill.

Currently, any conduct by the victim—including insults and other forms of offensive behaviour that are lawful—can potentially qualify as provocation if it is found to be sufficient to cause an ordinary person to lose self-control, the accused was not expecting it and the killing was sudden. The proposed amendment would limit the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family "honour" or reputation, cannot be used to reduce murder to manslaughter. Only conduct by the victim that amounts to a relatively serious criminal offence (i.e. an offence under the *Criminal Code* punishable by at least 5 years in prison) could be argued to be "provocation" for the purposes of the defence.

Consequential amendments

Consequential amendments resulting from the above-mentioned changes will also be made to the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act* to include references to the new peace bond.



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

3 novembre 2014 – Approuvé par le CM

INFOCAPSULES / Q ET R

Dépôt de la Loi sur la tolérance zéro face aux pratiques culturelles barbares

(Le contenu déjà approuvé est surligné en jaune)
À l'usage exclusif des porte-parole de CIC

OBJET

Le 5 novembre 2014, la *Loi sur la tolérance zéro face aux pratiques culturelles barbares* a été/sera déposée au Sénat. La *Loi* modifie la *Loi sur l'immigration et la protection des réfugiés* (LIPR), la *Loi sur le mariage civil* et le *Code criminel*, dans le but de mieux protéger et soutenir les immigrants vulnérables —principalement les femmes et les filles—, y compris par les mesures suivantes :

- La création, aux termes de la LIPR, d'une *nouvelle interdiction de territoire* pour les résidents permanents et les résidents temporaires qui pratiquent la polygamie au Canada.
- La modification de la *Loi sur le mariage civil* pour codifier les dispositions législatives en vigueur sur la nécessité du consentement libre et éclairé d'un homme et d'une femme à se prendre mutuellement pour époux et sur l'obligation de mettre fin à un mariage existant avant d'en contracter un autre, et pour porter à 16 ans l'âge minimum requis au Canada pour contracter un mariage, rendant ainsi invalide tout mariage en deçà de cet âge.
- La modification du *Code criminel* aux fins suivantes :
 - clarifier que quiconque célèbre un mariage en contravention de la loi fédérale commet une infraction;
 - élaborer de nouvelles infractions visant quiconque, sciemment et volontairement, célèbre un mariage forcé ou précoce ou y participe activement;
 - étoffer l'infraction existante consistant à faire passer à l'étranger un enfant résidant habituellement au Canada dans le but de commettre une infraction, pour y inclure le mariage forcé ou précoce;
 - aider à prévenir les mariages forcés ou précoces par l'instauration d'une ordonnance visant l'engagement à ne pas troubler l'ordre public, qui peut inclure le dépôt des passeports et l'imposition de conditions permettant de soustraire une victime potentielle de son retrait du Canada;
 - restreindre l'accessibilité à la défense de provocation, de sorte qu'elle ne puisse être invoquée dans les cas de crimes soi-disant d'honneur.

CONTEXTE

Cette initiative rejoint l'engagement du gouvernement dans le discours du Trône de 2013 à prendre des mesures pour veiller à ce que les mariages précoces et forcés ne se produisent pas sur le territoire canadien. Elle est également conforme aux objectifs des

tables rondes pancanadiennes de 2014 du ministre Alexander sur la violence à l'égard de femmes dans le contexte de l'immigration, ainsi qu'à ceux de l'étude du Comité permanent de la citoyenneté et l'immigration de la Chambre des communes sur la question de *Renforcer la protection des femmes dans notre système d'immigration*. Les conclusions de cette étude seront rendues publiques dans les mois qui viennent.

INFOCAPSULES

La Loi sur la tolérance zéro face aux pratiques culturelles barbares :

- La *Loi sur la tolérance zéro face aux pratiques culturelles barbares* renforce le fait que l'ouverture et la générosité du Canada excluent le mariage précoce et forcé ou polygame ou les pratiques culturelles préjudiciables.
- Le Canada ne tolérera pas la violence conjugale, comme les crimes « d'honneur » ou autres actes de violence fondés sur le sexe.
- Le gouvernement prend des mesures pour renforcer nos lois afin de veiller à ce qu'aucune femme ou jeune fille au Canada ne devienne une victime d'un mariage précoce ou forcé, de la polygamie, de violence soi-disant fondée sur « l'honneur » ou de toute autre forme de pratiques culturelles nocives. Ces mesures comprennent des modifications précises à la *Loi sur le mariage civil*, au *Code criminel* et aux lois en matière d'immigration du Canada visant à décourager la pratique de la polygamie sur le territoire canadien.
- Ces mesures mettent à profit les initiatives fédérales existantes visant à assurer que les femmes et les filles immigrantes, qui se trouvent dans des situations vulnérables, aient accès à un soutien et à des services qui répondent à leurs besoins particuliers.
- La *Loi sur la tolérance zéro envers les pratiques culturelles barbares* envoie un message clair à tous ceux qui viennent au Canada selon lequel le mariage forcé, la violence fondée sur l'honneur ou toute autre forme de pratiques culturelles préjudiciables sont inacceptables et ne seront pas tolérées.
- Le Canada s'oppose vigoureusement à ces pratiques, et mène la lutte à l'échelle internationale pour les faire reconnaître comme une violation des droits de la personne.
- Le gouvernement continuera à veiller à ce que le Canada soit protégé contre les pratiques culturelles barbares.

Polygamie :

- La *Loi sur la tolérance zéro face aux pratiques culturelles barbares* propose de créer une nouvelle interdiction de territoire visant la polygamie dans la *Loi sur l'immigration et la protection des réfugiés* (LIPR).
- Cette disposition augmenterait la capacité du gouvernement du Canada à empêcher que des actes de polygamie ne se produisent au Canada.
- Les changements feraient en sorte qu'un résident permanent ou un ressortissant étranger polygame qui est ou sera physiquement présent au Canada avec une ou plusieurs de ses épouses serait considéré comme pratiquant la polygamie au Canada.

À lui seul, ce motif serait suffisant pour considérer que le résident permanent ou ressortissant étranger est interdit de territoire.

QUESTIONS ET RÉPONSES

Aperçu

Q1. Qu'est-ce que le gouvernement considère comme étant des pratiques culturelles barbares?

Aux fins de cette initiative, le terme « *pratiques culturelles barbares* » englobe les formes de violence familiale fondée sur le sexe, comme le mariage précoce, forcé et polygame, et la violence fondée sur « l'honneur », qui ne sont pas compatibles avec le droit canadien.

Ces pratiques ont des conséquences dévastatrices sur les femmes et les filles, de même que sur les familles et la société en général. Elles nuisent grandement à toutes les personnes concernées, et peuvent constituer un facteur déterminant dans les résultats en matière d'immigration et peuvent même éliminer les possibilités d'intégration et de réussite.

Q2. Pourquoi les modifications sont-elles presque exclusivement axées sur la protection des femmes et des enfants immigrants et non pas de toutes les femmes vulnérables, y compris les femmes autochtones?

Dans le discours du Trône de 2013, le gouvernement a reconnu que des millions de femmes et de filles dans le monde entier continuent d'être victimes de violence, y compris par la pratique inhumaine du mariage précoce et forcé. Les modifications proposées dans le cadre de la *Loi sur la tolérance zéro envers les pratiques culturelles barbares* contribueront à veiller à ce que ces pratiques culturelles préjudiciables ne se produisent pas en territoire canadien.

Le gouvernement prend des mesures pour prévenir et combattre la violence envers les femmes et les filles. Cela inclut des mesures judiciaires renforcées, un meilleur soutien pour les victimes de la criminalité, des mesures pour protéger les femmes et les filles autochtones, ainsi que des mesures spécifiques pour prévenir la violence envers les femmes et les filles et des initiatives pour lutter contre la violence familiale. Pour des renseignements sur ces efforts, consultez le [site Web de Condition féminine](#).

Q3. Quelle est l'ampleur du problème causé par le mariage précoce, forcé ou polygame ou d'autres formes de pratiques culturelles préjudiciables au Canada?

Depuis 2009, Affaires étrangères, Commerce et Développement Canada (MAECD) a reçu environ 100 demandes d'aide consulaire dans des cas de mariages forcés. Citoyenneté et Immigration Canada (CIC) a également rencontré des cas probables de mariages forcés où la victime est soit le répondant soit la personne parrainée, et certains cas où les deux sont des victimes.

En août 2013, la clinique juridique sud-asiatique de l'Ontario (SALCO) a publié un rapport, qui a bénéficié d'une couverture médiatique nationale, traitant des mariages forcés en Ontario. Selon le rapport, les agences ont rapporté 219 cas de mariages forcés en Ontario entre 2010 et 2012. Dans tous les cas de mariages forcés mentionnés dans cette étude, il y a des victimes de violence. La plupart des victimes étaient jeunes et provenaient de diverses cultures et religions. La majorité des victimes ne connaissaient pas leurs droits dans une situation de mariage forcé. Le plus souvent, les victimes ont été forcées de se marier par un membre de la famille (principalement par les parents).

Les statistiques des bureaux de l'état civil de certaines provinces et de certains territoires indiquent qu'il y a des mariages de personnes mineures (moins de 18 ou 19 ans) avec consentement d'autrui; toutefois, elles concernent presque exclusivement des personnes mineures matures âgées de 16 ans ou plus.

QR4-QR6 Seulement si la question est posée

Q4. Les intervenants qui ont témoigné devant le Comité permanent de la citoyenneté et de l'immigration de la Chambre des communes sur l'amélioration de la protection accordée aux femmes immigrantes ont réclamé des changements pratiques et concrets. Cela comprend des séances d'information sur la connaissance des droits et des agences de services sociaux, avant et après que les femmes ne viennent au Canada; des services d'établissement accrus pour les femmes; une meilleure formation pour les agents d'immigration. Que fait le gouvernement en réponse à ces questions?

Le gouvernement a mis de l'avant un certain nombre d'initiatives qui fournissent aux femmes et aux filles immigrantes le soutien, la protection et des services essentiels et concrets.

- Le ministère de la Justice finance de nombreux organismes communautaires ou professionnels qui appuient des projets visant à lutter contre le mariage forcé et la violence soi-disant fondée sur l'honneur. Depuis 2007, Condition féminine a versé 2,8 millions de dollars en financement dans des projets visant à mettre fin au mariage forcé.*
- La GRC a élaboré une formation en ligne sur le mariage forcé et la violence soi-disant fondée sur « l'honneur » pour ses agents et partagera des renseignements avec les corps policiers municipaux et d'autres agences par le biais du Réseau canadien du savoir policier (RCSP), en 2014.*
- CIC améliore son programme d'établissement pour les femmes et les enfants immigrants. Dans les bureaux canadiens à l'étranger, les nouveaux arrivants au Canada ont accès à des ressources et des programmes qui les aident à connaître leurs droits, les lois et leurs responsabilités, ainsi qu'à un rapport détaillé sur le marché du travail, incluant des renseignements précis pour les femmes et les familles immigrantes, afin qu'elles puissent prendre des décisions éclairées avant de venir au Canada.*

- *À leur arrivée au Canada, les femmes immigrantes ont accès à des services et à une prise en charge qui les aident à s'adapter à la vie au Canada et à développer leurs compétences pour intégrer le marché du travail ou faire progresser leur carrière. À titre d'exemple :*
 - *Les organismes financés par CIC offrent la formation professionnelle ciblée pour les femmes, dont des ateliers destinés uniquement aux femmes, qui se déroulent dans un environnement ouvert et accueillant permettant d'apprendre et de discuter des stratégies et des renseignements de base nécessaires pour obtenir un emploi.*
 - *Des cours de langue destinés uniquement aux femmes immigrantes et réfugiées sont offerts. Ces cours traitent entre autres de violence familiale, de violence conjugale, des droits de la femme, des droits et responsabilités légaux, et des soins de santé; ils incluent la transition ou l'aiguillage vers d'autres services accessibles dans la communauté. Des services de consultation en situation de crise sont également disponibles, et dans certains cas, les aiguillages peuvent être faits vers diverses ressources locales, dont la police, les refuges et les conseillers.*

Pour des renseignements supplémentaires, veuillez lire le Document d'information – Key Federal Initiatives Protecting and Supporting Vulnerable Women and Girls (Principales initiatives fédérales visant à protéger et à soutenir les femmes et les filles vulnérables)

Q5. Que fait le gouvernement en réponse aux préoccupations soulevées par les intervenants qui disent que la mesure visant la résidence permanente conditionnelle pour les époux parrainés empêche les femmes de quitter une relation abusive par peur de perdre leur statut au Canada?

Le gouvernement du Canada est préoccupé par le problème que constitue la violence familiale et y est sensible.

En consultation avec divers groupes spécialisés dans ce domaine, CIC a élaboré un processus simple et clair permettant aux époux parrainés touchés par la mesure de résidence permanente conditionnelle (depuis le 25 octobre 2012), qui sont victimes de mauvais traitements ou de négligence, de se manifester sans crainte de faire l'objet de mesures d'exécution de la loi.

Les conjoints parrainés qui sont touchés par cette mesure conditionnelle n'ont pas à rester dans une relation abusive. Ils peuvent demander une dérogation en téléphonant au Téléc centre de CIC, au 1-888-242-2100.

Des lignes directrices ont été élaborées pour aider les agents à traiter les demandes de dérogation fondées sur les mauvais traitements ou la négligence et à manipuler les renseignements de nature délicate connexes. Ce processus simple permet aux époux légitimes aux prises avec des situations de violence de se manifester sans crainte de compromettre leur statut de résident permanent au Canada.

Q6. Pourquoi le gouvernement n'a-t-il pas agi pour empêcher le renvoi de Jamili Bibi, une demandeuse d'asile déboutée, qui doit se cacher pour éviter d'être lapidée à mort dans son pays d'origine?

Comme le déclarait le ministre de la Citoyenneté et de l'Immigration au sujet de ce cas : « Le Canada dispose d'un système de demande d'asile équitable et généreux. La Commission de l'immigration et du statut de réfugié, un organisme indépendant, ne cède pas aux pressions politiques, mais fonde plutôt ses décisions sur les faits. Lorsque les demandes sont refusées, il existe des recours qui permettent de faire appel de la décision. Lorsque ces recours sont épuisés, nous nous attendons tous à ce que les demandeurs quittent le Canada. »

Cas particulier : Pour des raisons de confidentialité, il nous est impossible de commenter les cas individuels.

Polygamie

Q7. La pratique de la polygamie est-elle répandue au Canada?

Mille personnes résident dans la communauté polygame de Bountiful, en C.-B.; certaines d'entre elles pourraient être des ressortissants étrangers qui sont venus des États-Unis à titre de visiteur afin d'épouser des résidents canadiens. Il y a encore également des mariages polygames contractés par des résidents canadiens, par des immigrants et parmi les communautés de nouveaux arrivants provenant de pays où cette pratique est reconnue par la loi.

Si la question est posée au sujet de la communauté de Bountiful

Q8. Cette nouvelle disposition sur l'interdiction de territoire permettra-t-elle au gouvernement d'empêcher la communauté de Bountiful d'emmener au Canada des filles et de femmes américaines aux fins de mariages polygames?

La disposition proposée sur la polygamie offrira aux agents d'immigration plus d'outils de prévention et d'exécution de la loi, au besoin, lorsqu'une preuve est mise au jour que la polygamie est pratiquée au Canada. Cela signifie qu'un ressortissant étranger qui pratique la polygamie au Canada peut se voir refuser un visa ou, si un étranger ou un résident permanent est déjà au Canada, il peut faire l'objet d'une enquête devant la Commission de l'immigration et du statut de réfugié (CISR), et le cas échéant, faire l'objet de mesures d'exécution de la loi en matière d'immigration.

****Information générale :** Le 13 août 2014, des chefs d'accusation ont été portés en C.-B. contre quatre personnes de la communauté de Bountiful : Winston Blackmore et le beau-frère de Blackmore, James Oler, ont été accusés d'avoir pratiqué la polygamie, et le frère de Winston Blackmore, Brandon Blackmore, et sa belle-sœur, Emily Crossfield ont été accusés d'avoir illégalement fait passer à l'étranger un enfant du Canada.

Q9. Quels sont les préjudices associés aux mariages polygames?

En défendant la loi du Canada qui interdit la polygamie, l'honorable juge en chef Bauman, de la Cour suprême de la C.-B., estimait que la pratique des mariages polygames entraînait des risques physiques et psychologiques pour les femmes, les enfants et la société en général. Voici quelques-unes de ses conclusions :

« Les femmes dans des relations polygames sont plus vulnérables à la violence physique et psychologique. Elles courent un risque plus élevé de violence conjugale et d'agression sexuelle. »

« Les enfants issus de familles polygames connaissent des taux de mortalité infantile plus élevés, même en pondérant la situation économique et d'autres variables pertinentes. Ils sont susceptibles d'éprouver davantage de problèmes physiques, émotionnels et de comportement, de même qu'un taux de réussite scolaire plus faible que les enfants de familles monogames. Ces résultats sont probablement le fait de taux élevés de conflits, de troubles émotifs et de tension dans les familles polygames. »

« Le mariage précoce est courant chez les filles, souvent avec des hommes beaucoup plus âgés. »

« La polygamie institutionnalise l'inégalité entre les sexes. La hiérarchie patriarcale et l'autoritarisme sont des caractéristiques communes des collectivités polygames. Les torts causés à la société par la polygamie comprennent le fait crucial qu'un grand nombre de ses torts individuels ne sont pas propres à un contexte religieux, culturel ou régional particulier. Ils peuvent être généralisés et sont susceptibles de se produire partout où l'on retrouve la polygamie. »

Q10. Est-ce que des personnes qui pratiquent la polygamie à l'étranger peuvent le faire également au Canada, aujourd'hui?

Non, la polygamie est illégale au Canada. Par conséquent, les mariages multiples ne sont pas reconnus en vertu des lois canadiennes en matière d'immigration. Cela veut dire qu'un résident permanent ou citoyen canadien peut seulement immigrer avec un seul conjoint, après la dissolution d'autres mariages, afin de « convertir » le mariage polygame en mariage monogame.

Toutefois, en ce moment, un résident temporaire qui pratique la polygamie dans son pays d'origine est autorisé à entrer au Canada avec une seule de ses épouses au moment où il demande d'entrer au pays. Cette nouvelle loi fera en sorte qu'un étranger désirant obtenir la **résidence temporaire** sera considéré interdit de territoire s'il essaie d'entrer au Canada avec une de ses épouses.

Q11. Comment la *Loi sur la tolérance zéro envers les pratiques culturelles barbares* peut-elle mieux empêcher la polygamie de se produire au Canada?

La polygamie est illégale au Canada. Ainsi, les mariages multiples ne sont pas reconnus par les lois canadiennes en matière d'immigration.

Selon les modifications proposées, un résident permanent ou temporaire qui présente une demande pour venir au Canada avec l'une de ses épouses, serait considéré comme pratiquant la polygamie et serait donc interdit de territoire au Canada.

Q12. Comment les agents des visas ou les agents des services frontaliers seront-ils en mesure d'empêcher les immigrants ou les visiteurs de pratiquer la polygamie au Canada?

Le projet de loi permettra la création d'une nouvelle interdiction de territoire spécifique à la polygamie accroît l'accessibilité aux outils offerts par le programme d'immigration pour lutter contre la polygamie au Canada et pour prendre des mesures d'exécution de la loi lorsqu'une preuve que la polygamie est pratiquée au Canada est mise au jour. Par exemple, s'il existe une preuve suffisante et crédible démontrant qu'un résident temporaire ou permanent pratique la polygamie au Canada, cela serait suffisant pour préparer un rapport d'interdiction de territoire et convoquer cette personne à une enquête devant la Commission de l'immigration et du statut de réfugié. Le résident permanent ou l'étranger pourrait être interdit de territoire sur ce seul motif, sans qu'il ait été déclaré coupable d'une infraction ou qu'il ait été conclu qu'il a fait une fausse déclaration sur sa situation. S'il est jugé interdit de territoire, une mesure de renvoi est prise, et la personne frappée de cette mesure doit quitter le Canada sur-le-champ. Selon la LIPR, la mesure de renvoi doit être exécutée dès que possible.

Q13. Quel genre de preuve est nécessaire pour qu'un agent défère le cas à la CISR pour une enquête?

Même en tenant compte des modifications proposées, dépister des cas de polygamie au Canada sera encore très difficile. Lorsqu'une information est révélée et est appuyée d'une preuve suffisante et crédible, comme une information obtenue lors d'une entrevue, les agents doivent préparer un rapport d'interdiction de territoire et déférer l'affaire à la Section de l'immigration de la CISR pour la tenue d'une enquête.

Q14. Quels sont les effets de cette nouvelle disposition sur l'admissibilité des enfants?

Dans le programme pour résidents permanents, les enfants à charge accompagnant des parents polygames peuvent être interdits de territoire en raison de leur statut de membre de la famille d'une personne interdite de territoire.

Selon les modifications législatives relatives aux membres de famille interdits de territoire élaborées en vertu de la *Loi accélérant le renvoi de criminels étrangers*, un enfant à charge dans le volet temporaire ne serait pas interdit de territoire. Cependant, dans les cas de polygamie, les agents peuvent tenir compte de la bonne foi pour l'enfant, si les parents sont refusés.

Q15. Cette nouvelle disposition sur l'interdiction de territoire sera-t-elle appliquée aux personnes qui ont déjà été autorisées à entrer au Canada?

La nouvelle disposition s'appliquerait à tous les étrangers et résidents permanents, dès que la disposition sera en vigueur. Cela voudrait dire, par exemple, que si deux étrangers

qui ont déjà été admis au Canada sont encore au Canada au moment où la disposition prend effet, ils pourraient être interdits de territoire si la relation était polygame. Un des conjoints pourrait devoir quitter le Canada et ne pourrait pas rendre visite à l'étranger si l'étranger reste au Canada, puisqu'un étranger, qui est ou sera effectivement présent au Canada avec l'un ou l'autre de ses partenaires, serait considéré comme pratiquant la polygamie au Canada. En général, cependant, il est probable que la nouvelle disposition sera plus utile dans l'évaluation de nouveaux demandeurs de visa, plutôt qu'à la frontière ou à l'intérieur du Canada.

Q16. Si une personne prend des mesures pour mettre fin à sa relation polygame en divorçant, sera-t-elle encore interdite de territoire?

Une personne qui convertit son mariage en un mariage monogame, soit en divorçant de tous ses partenaires, sauf du premier, ou en divorçant de tous les partenaires pour en remarier un, ne serait plus interdite de territoire sur ces motifs.

Q17. Est-ce que des pays partageant les mêmes vues adoptent une approche semblable à celle proposée par le Canada pour lutter contre la polygamie?

La polygamie est illégale aux États-Unis, au Royaume-Uni, en Australie et en Nouvelle-Zélande. Les étrangers souhaitant immigrer avec l'intention de pratiquer la polygamie à leur entrée dans l'un de ces pays sont réputés interdits de territoire. Seul le premier conjoint peut se qualifier à titre de conjoint aux fins de l'immigration. Dans le volet temporaire, les É.-U., le Royaume-Uni et la Nouvelle-Zélande autorisent un étranger qui pratique la polygamie dans son pays d'origine à emmener un conjoint – pour qu'il y ait interdiction de territoire, deux conjoints doivent être présents dans le pays. En Australie, dans le cas d'étudiants et de résidents temporaires, aucun conjoint n'est autorisé à entrer si les agents frontaliers sont au courant que le demandeur pratique la polygamie.

Q18. Les modifications proposées visent-elles les réfugiés et les personnes protégées? (La DGAR est consultée)

Les processus actuels liés à nos obligations internationales sur le traitement des demandeurs d'asile ne seront pas touchés par ce projet de loi. Une conclusion d'interdiction de territoire pour motif de pratique de la polygamie n'empêchera pas une demande d'asile présentée à l'intérieur du Canada d'être déferée à la CISR.

Si une question est posée concernant les réfugiés réinstallés ou parrainés par le secteur privé

La CIC a informé le Haut-Commissariat des Nations Unies pour les réfugiés (HCR) que les personnes dans un mariage polygame ne doivent pas être recommandées pour réinstallation au Canada. De plus, les agents de CIC évaluent les réfugiés parrainés par le secteur privé en fonction des lois canadiennes en matière d'immigration, ainsi que des exigences liées aux mariages monogames; par conséquent, les personnes pratiquant la polygamie seraient interdites de territoire au Canada.

Q19. Comme la polygamie est considérée comme légale dans environ 60 pays, le gouvernement ne craint-il pas que la nouvelle disposition cause des problèmes et crée un nouvel irritant dans les relations avec ces pays?

Bien que les mariages polygames soient reconnus dans plusieurs pays, ils sont interdits par la loi au Canada. La pratique de la polygamie est une infraction en vertu du *Code criminel*, et la polygamie n'est pas reconnue en vertu de droit canadien de la famille.

Les modifications proposées renforceraient la capacité du Canada de prévenir la pratique de la polygamie sur notre territoire. Elles envoient également un message clair à ceux qui viennent au Canada selon lequel les mariages polygames sont inacceptables et ne seront pas tolérés.

Q20. Les personnes interdites de territoire aux termes de la nouvelle disposition pourraient-elles interjeter appel? D'autres recours leur seraient-ils offerts pour surmonter leur interdiction de territoire?

Ces modifications ne réduiront en rien les droits d'appel existants devant la Section d'appel de l'immigration, et le contrôle judiciaire restera accessible aux résidents temporaires et aux résidents permanents.

En outre, les agents auront encore le pouvoir discrétionnaire, au besoin, d'avoir recours ou non à des mesures d'exécution de la loi. Les personnes interdites de territoire peuvent recevoir un permis spécial (p. ex. un permis de séjour temporaire ou PST) et être autorisées à entrer au Canada. Les permis de séjour temporaire sont délivrés dans des cas exceptionnels lorsque l'entrée au Canada est justifiée dans les circonstances. De plus, les étrangers pourraient présenter une demande de résidence permanente et être exemptés du critère applicable, si le ministre est d'avis que des motifs d'ordre humanitaire le justifient. Cependant, avant de prendre de telles décisions, il faudra déterminer si la personne pratique la polygamie en sol canadien en violation du droit pénal canadien.

Q21. La reconnaissance des mariages polygames par le droit familial de certaines provinces est-elle incompatible avec la création de cette nouvelle interdiction de territoire concernant la polygamie?

Non. Un grand nombre de lois provinciales concernant la famille incluent les mariages polygames afin de protéger les femmes, en veillant à ce que leur « conjoint » ne puisse éviter de verser une pension alimentaire, de partager les biens matrimoniaux et d'autres conséquences, si leur relation prend fin. Il s'agit d'un objectif juridique tout à fait distinct, qui assure l'égalité d'accès aux obligations entre les conjoints en matière de droit privé (c.-à-d. la relation entre les individus). Quant à la reconnaissance des gouvernements en matière de droit public (c.-à-d. la relation entre les individus et l'État), le nouveau motif d'interdiction de territoire est compatible avec l'approche existante dans le *Code criminel* et est repris dans toutes les autres lois fédérales et provinciales, qui ne reconnaissent pas les mariages polygames, par exemple, dans le cas de la rente du conjoint survivant ou des crédits d'impôt.

La loi proposée par le gouvernement fédéral en matière d'immigration met à profit l'interdiction de la polygamie actuelle enchâssée dans le droit public canadien, qui

renforcera l'accessibilité aux outils offerts par le programme d'immigration pour lutter contre la polygamie au Canada et pour prendre des mesures d'exécution de la loi à l'encontre d'étrangers et de résidents permanents lorsqu'une preuve est disponible.

PORTE-PAROLE

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BACKGROUND

Draft

(BG 2) Zero Tolerance for Barbaric Cultural Practices Act – Addressing Polygamy

The *Zero Tolerance for Barbaric Cultural Practices Act* proposes the creation of a new inadmissibility under the *Immigration and Refugee Protection Act* (IRPA) for practising polygamy in Canada.

This provision would increase the Government of Canada's ability to prevent polygamy from occurring in Canada. While current IRPA provisions require foreign nationals wishing to become permanent residents to have only one spouse, once in Canada it is difficult to find these individuals inadmissible. A criminal conviction or finding of misrepresentation is currently required before a person practising polygamy can be found inadmissible.

The changes would mean that a polygamist permanent resident or foreign national who is or will be physically present in Canada with even one of their polygamous spouses would be considered to be practising polygamy in Canada. The permanent resident or foreign national could be found inadmissible *on that basis alone*, without requiring evidence that the person misrepresented their situation or has a criminal conviction.

The new inadmissibility would apply in both the temporary and permanent immigration streams. While in the permanent stream, permanent residents will be required to stop practicing polygamy and will only be permitted to immigrate with one monogamous spouse.

In the temporary stream, visitors, students and workers who practise polygamy abroad and come to Canada with even one of their spouses, or who join one of their spouses in Canada, would be considered to be practising polygamy on Canadian soil and would be inadmissible under IRPA.



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

November 3, 2014 – MINO approved

MEDIA LINES / Qs AND As

Tabling of the *Zero Tolerance for Barbaric Cultural Practices Act*

(Previously approved material is highlighted)

For use by CIC departmental spokespersons only

ISSUE:

On November 5, 2014, the *Zero Tolerance for Barbaric Cultural Practices Act* was/will be tabled in the Senate. The *Act* amends the *Immigration and Refugee Protection Act* (IRPA), the *Civil Marriage Act* and the *Criminal Code* to provide more protection and support for vulnerable immigrants—primarily women and girls—including by:

- Creating a *new inadmissibility* under IRPA that would render permanent residents and temporary residents inadmissible if they practice polygamy in Canada.
- Amending the *Civil Marriage Act* to codify the existing legal requirements for free and enlightened consent for marriage and for ending an existing marriage prior to entering another; and to establish a new national minimum age for marriage of 16, below which no marriage would be valid;
- Amending the *Criminal Code* to
 - clarify that it is a crime for a marriage officiant to solemnize a marriage in violation of federal law;
 - introduce new offences for knowingly and willfully celebrating or actively participating in a forced or under age marriage;
 - expand the existing offence of removing a child from Canada for the purpose of committing a crime to include forced or underage marriage;
 - help prevent forced or underage marriages by introducing a specific court-ordered peace bond, which can include passport surrenders and conditions preventing the removal of a potential victim from Canada; and
 - limit the availability of the defence of provocation so that it is not available in cases of so-called honour killing.

BACKGROUND:

This initiative is consistent with the Government's commitment in the 2013 Speech from the Throne to take steps to ensure that early and forced marriage does not occur on Canadian soil; with Minister Alexander's 2014 cross-Canada roundtables on violence against women in the immigration context; and is consistent with the aims of the House of Commons' Standing Committee on Citizenship and Immigration study on the issue of *Strengthening the Protection of Women in our Immigration System*. Findings of this study will be made public in the coming months.

MEDIA LINES:

The *Zero Tolerance for Barbaric Cultural Practices Act*:

- The *Zero Tolerance for Barbaric Cultural Practices Act* reinforces that Canada's openness and generosity does not extend to early and forced or polygamous marriage or harmful cultural practices.
- Canada will not tolerate spousal abuse, such as so-called "honour killings," or other gender-based violence.
- The Government is taking steps to strengthen our laws to help to ensure that no young girl or woman in Canada becomes a victim of early or forced marriage, polygamy, so-called "honour"-based violence or any other form of harmful cultural practices. These steps include making specific amendments to Canada's *Civil Marriage Act*, *Criminal Code* and immigration laws aimed at deterring the practice of polygamy on Canadian soil.
- These actions build on existing federal initiatives that are aimed at ensuring that immigrant women and girls in vulnerable situations have access to supports and services that meet their unique needs.
- The *Zero Tolerance for Barbaric Cultural Practices Act* sends a clear message to those coming to Canada that forced marriage, honour-based violence, or any other form of harmful cultural practices are unacceptable and will not be tolerated.
- Canada has taken a strong stance against these practices, and is leading international efforts to address them as a violation of basic human rights.
- The Government will continue to ensure Canada is protected from harmful barbaric cultural practices.

Polygamy:

- The *Zero Tolerance for Barbaric Cultural Practices Act* proposes the creation of a new inadmissibility for polygamy in the *Immigration and Refugee Protection Act* (IRPA).
- This provision would increase the Government of Canada's ability to prevent polygamy from occurring in Canada.
- The changes would mean that a polygamist permanent resident or foreign national who is or will be physically present in Canada with any of their spouses would be considered to be practising polygamy in Canada.
- The permanent resident or foreign national could be found inadmissible *on that basis alone*.

QUESTIONS AND ANSWERS:

Overview

Q1. What does the government consider to be barbaric cultural practices?

For the purposes of this initiative, the term “barbaric cultural practices” encompasses forms of gender-based family violence, such as early, forced and polygamous marriage, female genital mutilation and “honour” based violence; which are not in line with Canadian law.

These practices have devastating impacts on women and girls as well as families and society in general. They severely affect all those involved, from influencing immigration outcomes to breaking down opportunities for integration and success.

Q2. Why do the amendments focus almost exclusively on protecting immigrant women and children and not all vulnerable women, including Aboriginal women?

In the 2013 Speech from the Throne, the Government recognized that millions of women and girls worldwide continue to be brutalized by violence, including through the inhumane practice of early and forced marriage. The proposed changes under the *Zero Tolerance for Barbaric Cultural Practices Act* will help ensure that these harmful cultural practices do not occur on Canadian soil.

The government is taking action to prevent and address violence against women and girls. This includes strengthened criminal justice measures; greater support for victims of crime; measures to protect Aboriginal women and girls; and specific measures to prevent violence against women and girls and initiatives to address family violence. For information on these efforts, visit the Status of Women website.

Q3. How significant a problem is early, forced or polygamous marriage or other forms of harmful cultural practices in Canada?

The Department of Foreign Affairs, Trade and Development (DFATD) has received approximately 100 requests for consular assistance in forced marriage cases since 2009. Citizenship and Immigration Canada (CIC) has also encountered suspected forced marriage immigration cases where the victim is either the sponsor, the person being sponsored or in some cases, where both are victims.

In August 2013, the South Asian Legal Clinic of Ontario (SALCO) released a report that received national coverage, discussing forced marriages in Ontario. According to the report, agencies reported 219 cases of forced marriage in Ontario between 2010 and 2012. All the individuals who were forced into marriages in this survey experienced violence. Most victims were young and from various cultures and religions. The majority of victims were unaware of their rights in a forced marriage situation. Victims were most often forced into marriage by a family member (mainly parents).

Statistics from some provinces and territories is available, indicate that there are some marriages of minors (under 18 or 19 years of age) with substitute consent, but that they are almost exclusively mature minors of 16 years of age or older.

QA4-QA6 If pressed only

Q4. Stakeholders who have appeared before CIMM regarding better protecting immigrant women have called for practical, concrete changes. This includes “know your rights/social services agencies” information sessions before and after women come to Canada; increased settlement services for women; better training for immigration officers. What is the Government doing to address these concerns?

The Government has a number of initiatives that are providing vital, concrete support, protection and services for immigrant women and girls.

- *The Department of Justice funds a number of community-based or professional organizations that support projects to address forced marriage and so-called honour based violence. Since 2007, the Status of Women has provided \$2.8 million in funding in support of project focused on stopping forced marriage.*
- *The RCMP has developed online training on forced marriage and so-called “honour” based violence for its officers and will share information with municipal police and other agencies through the Canadian Police Knowledge Network in 2014.*
- *CIC is enhancing its settlement program for immigrant women and children. At Canadian missions abroad, newcomers to Canada can access resources and programs that help them understand their rights, laws and responsibilities, and detailed labour market information, including specific information for immigrant women and families, so they can make informed decisions before coming to Canada.*
- *Once in Canada, immigrant women have access to a range of support and services that help them adjust to life in Canada and to build their skill set to enter the workforce and/or to advance their career. For example:*
 - *CIC-funded organizations provide targeted skills training for women, including women’s only workshops, offering an inclusive and open environment to learn and discuss job search strategies and basic information needed to obtain work.*
 - *Women's-only language classes are available for immigrant and refugee women. These classes cover issues such as family violence, spousal abuse, women's rights, legal rights and responsibilities, and health care, and include bridging or referral to other available services in the community. Crisis counselling services are also available, and in some cases, referrals can be made to a variety of local resources, including police, shelters, and counselors.*

For more information, please read the Backgrounder – Key Federal Initiatives Protecting and Supporting Vulnerable Women and Girls

Q5. What is the government doing to address concerns raised by stakeholders who say that the conditional permanent residency provision for sponsored spouses is preventing women from leaving abusive relationships out of fear of losing their status in Canada?

The Government of Canada is concerned about and sensitive to the issue of family violence.

In consultation with various groups with expertise in this area, CIC has developed a clear, straightforward process that allows sponsored spouses impacted by the conditional permanent residence measure (on or after October 25, 2012), who are victims of abuse or neglect, to come forward without having to worry that they might face enforcement action:

Sponsored spouses who are subject to the condition do not have to stay in an abusive relationship. They can request an exception from the by calling the CIC Call Centre at 1-888-242-2100.

Guidelines have been developed to assist officers in processing requests for exceptions based on abuse or neglect and in handling sensitive information related to them. This straightforward process allows legitimate spouses in abusive situations to come forward without fear of jeopardizing their permanent residence status in Canada.

Q6. Why didn't the government act to stop the removal of Jamili Bibi, a failed refugee claimant who is in hiding to avoid being stoned to death in her home country?

As Canada's Citizenship and Immigration Minister said concerning this case, "Canada has a fair and generous asylum system where decisions are made, based on the merits of the individual's claim, by the independent Immigration and Refugee Board, not by undue political pressure but according to the facts and where claims fail, there is recourse to appeals. When those appeals are exhausted, we all expect failed claimants to leave this country."

Case specific: For privacy reasons, we are unable to speak to individual cases.

Polygamy

Q7. How prevalent is the practice of polygamy in Canada?

There are some 1,000 residents in the polygamist community of Bountiful, B.C., some of whom may be foreign nationals who came as visitors from the U.S. to marry Canadian residents. As well, polygamous marriages still exist involving Canadians, immigrants and in newcomer communities from countries where it is practiced legally.

If pressed on Bountiful community:

Q8. Will the Government be able to stop the Bountiful community from bringing young American girls and women into Canada to enter into polygamous marriages with the new inadmissibility provision?

The proposed polygamy provision would provide immigration officers with more tools to prevent and take enforcement action, as appropriate, where evidence comes to light of polygamy being practised in Canada. This means that a foreign national who will be practicing polygamy in Canada may be denied a visa, or, if a foreign national or permanent resident is already in Canada, they may be referred for an admissibility hearing before the Immigration and Refugee Board of Canada (IRB) and, if appropriate, subject to immigration enforcement proceedings.

***For background information: On August 13, 2014, charges were laid in B.C. against four individuals from the Bountiful community. Winston Blackmore and Blackmore's brother-in-law James Oler have been charged with practicing polygamy, and Winston Blackmore's brother Brandon Blackmore and sister-in-law Emily Crossfield have been charged for unlawfully removing a child from Canada.*

Q9. What harms are associated with polygamous marriages?

In upholding Canada's polygamy law, the Honourable Chief Justice Bauman of the B.C. Supreme Court found that there were physical, psychological and social harms associated with the practice of polygamous marriages. Here are some of his findings:

"Women in polygamous relationships are at an elevated risk of physical and psychological harm. They face higher rates of domestic violence and abuse, including sexual abuse."

"Children in polygamous families face higher infant mortality, even controlling for economic status and other relevant variables. They tend to suffer more emotional, behavioural and physical problems, as well as lower educational achievement than children in monogamous families. These outcomes are likely the result of higher levels of conflict, emotional stress and tension in polygamous families."

"Early marriage for girls is common, frequently to significantly older men."

"Polygamy also institutionalizes gender inequality. Patriarchal hierarchy and authoritarian control are common features of polygamous communities. Polygamy's harm to society includes the critical fact that a great many of its individual harms are not specific to any particular religious, cultural or regional context. They can be generalized and expected to occur wherever polygamy exists."

Q10. Can people who practise polygamy abroad do so in Canada today?

No, polygamy is illegal in Canada, and therefore multiple marriages are not recognized under Canada's immigration laws. This means that a permanent resident or Canadian citizen can only immigrate with one spouse after having dissolved other marriages to "convert" their polygamous marriage to a monogamous one.

Currently, however, a temporary resident who practises polygamy in their country of origin is generally allowed to enter with only one spouse at the time of seeking entry. With this Bill, a foreign national seeking **temporary residence** will be found inadmissible if they try to enter Canada with even one spouse.

Q11. How would the *Zero Tolerance for Barbaric Cultural Practices Act* better prevent polygamy from happening in Canada?

Although polygamous marriages are legal in many countries, they are not legal in Canada. Practising polygamy is an offence under the *Criminal Code* and polygamy is not recognized under Canadian family law.

Under the proposed changes, a permanent or temporary resident who is applying to come to Canada with any of their spouses would be considered to be practising polygamy and therefore would be inadmissible to Canada.

Q12. How would visa or border services officers be able to prevent immigrants or visitors from practising polygamy in Canada?

The Bill allows for the creation of a new inadmissibility specifically for polygamy increases the availability of tools within the immigration program to prevent polygamy in Canada and to take action where evidence comes to light that polygamy is being practised in Canada.

For example, if sufficient and credible evidence is found that demonstrates a temporary or permanent resident is practising polygamy in Canada, this could be sufficient to prepare an inadmissibility report and refer the individual to the Immigration and Refugee Board for an admissibility hearing. The permanent resident or foreign national could be found inadmissible on that basis alone without requiring a criminal conviction or a finding that the person misrepresented their situation. If found inadmissible, a removal order is issued and the person against whom the removal order is made must leave Canada immediately. According to IRPA the removal order must be enforced as soon as possible.

Q13. What type of evidence would be needed for an officer to refer the case to the IRB for an admissibility hearing?

Even with the proposed changes, detecting polygamy cases in Canada will still be very difficult. When information comes to light and is supported by sufficient and credible evidence such as information obtained through an interview, officers must prepare an inadmissibility report and refer the matter to the Immigration Division of the IRB for a hearing.

Q14. How would this new provision affect children's admissibility?

In the permanent resident program, accompanying dependent children (as the children of polygamous parents) may be found inadmissible for being the family member of an inadmissible person.

According to the legislative amendments concerning inadmissible family members, made pursuant to the *Faster Removal of Foreign Criminals Act*, a dependent child in the temporary stream would not be inadmissible. Officers may, however, look at *bona fides* for the child if parents are refused for polygamy cases.

Q15. Would this new inadmissibility provision be applied to those who have already been allowed to enter Canada?

The new provision would apply to all foreign nationals and permanent residents once the provision comes into force. This would mean that, for example, if two foreign nationals who have previously been admitted to Canada are still in Canada at the time the provision comes into force, they could be found inadmissible if the relationship was polygamous.

One spouse may have to leave Canada and could not visit the foreign national if the foreign national remains in Canada as the presence of a foreign national who is or will be physically present in Canada with any of their spouses would be considered to be practising polygamy in Canada. Overall, however, the new provision is most likely to be most useful in the case of assessing new visa applicants rather than at the border or inland.

Q16. If a person takes steps to end their polygamous practice by divorcing their spouse, would they still be considered inadmissible?

An individual who converts to a monogamous marriage, either by divorcing all spouses but the first, or by divorcing all spouses and re-marrying one, would no longer be inadmissible on those grounds.

Q17. Do any like-minded countries take a similar approach to the one proposed by Canada to deal with polygamy?

Polygamy is illegal in the U.S., the United Kingdom, Australia and New Zealand. Foreign nationals seeking to immigrate and who intend to practise polygamy when they enter one of these countries are considered inadmissible. Only the first spouse may qualify as a spouse for immigration purposes. In the temporary stream, the US, the UK, and New Zealand allow a foreign national who practises polygamy in their country of origin to bring one spouse - there must be two spouses present in the country in order to be inadmissible. In Australia, for students and temporary residents, no spouses are allowed to enter if border officials are aware that the applicant is practising polygamy.

Q18. Will the proposed changes affect refugees and protected persons? (RAB being consulted)

Current processes related to our international obligations regarding the treatment of refugee claimants will not be affected by this bill. A finding of inadmissibility on the grounds of practising polygamy will not render an in-Canada claim ineligible to be referred to the IRB.

If pressed on resettled or privately sponsored refugees:

CIC has advised the UNHCR that individuals in a polygamous marriage should not be referred for resettlement to Canada. As well, CIC officers assess privately sponsored refugee cases against Canada's immigration laws, including monogamous marriage requirements; therefore individuals practising polygamy would be inadmissible to Canada.

Q19. As polygamy is considered legal in approximately 60 countries, is the government concerned that the proposed provision will cause concern and create a new irritant with these countries?

Although polygamous marriages are legal in many countries, they are not legal in Canada. Practising polygamy is an offence under the *Criminal Code* and polygamy is not recognized under Canadian family law.

The proposed changes would strengthen Canada's ability to stop polygamy from being practised on our soil. They also send a clear message to those coming to Canada that polygamous marriages are unacceptable and will not be tolerated.

Q20. Would people found to be inadmissible due to the new provision be able to file an appeal? Would there be other avenues available to them to overcome their inadmissibility?

These amendments will not restrict otherwise available appeal rights to the Immigration Appeal Division and judicial review would remain available to both temporary residents and permanent residents.

Moreover, officers will maintain discretion on whether or not to pursue enforcement as appropriate. Individuals who are inadmissible may receive a special permit (e.g. a temporary resident permit or TRP) and be permitted to enter Canada. TRPs are issued in exceptional circumstances when the entry to Canada is justified in the circumstances. In addition, foreign nationals may be able to apply for permanent residence and be exempted from applicable criteria if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations. However, such decisions would need to take into consideration whether the person would be practising polygamy on Canadian soil in violation of the Canadian criminal law.

Q21. Is the fact that some provincial family laws recognize polygamous marriages inconsistent with the creation of this new inadmissibility regarding polygamy?

No. Many provincial family laws include polygamous marriages in order to protect women by ensuring that their "spouse" cannot avoid making support payments, sharing marital property and other consequences if their relationship breaks down. This is a completely different legal purpose, which ensures equal access to private law (i.e. the relationship between individuals) obligations between the couple.

With regard to recognition by governments in public law (i.e. the relationship between individuals and the state), the new ground of inadmissibility is consistent with the approach already in the *Criminal Code* and reflected in all other federal and provincial legislation, which does not recognize polygamous marriages, for example, for pension survivor benefits or income tax credits.

The federal government's proposed immigration law builds on the current Canadian public law ban on polygamy, which will strengthen the availability of tools within the immigration program to prevent polygamy and to take enforcement action against foreign nationals and permanent residents where evidence is available.

SPOKESPERSONS:

General media relations line: 613-952-1650

General media relations e-mail box: CIC-Media-Relations@cic.gc.ca

Prepared by: Jacqueline Kennedy Andrea Asbil	Consulted: Admissibility Branch TRPD, OMC PRPD, OMC SSG, IB RAB PID-OMC CBSA DOJ Director, Strat Comms, CIC DLSU ADMO, DMO, MINO	To be reviewed by: DFATD, PHAC, SWC, PS
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BACKGROUND

Draft

(BG 3) - Key Federal Initiatives Protecting and Supporting Vulnerable Women and Girls

The bill would complement existing Canadian initiatives, both at home and abroad, to put an end to barbaric cultural practices that go against Canadian values because they cause harm to women and girls and prevent their full participation in society. These practices, which include early and forced marriage, "honour"-based violence and female genital mutilation/cutting, have no place in Canada's free and democratic society. Some of Canada's initiatives to end these practices are set out below.

Canada on the international stage

Canada has made ending child, early and forced marriage (CEFM) a foreign policy and development priority and is intensifying programming and advocacy efforts to address CEFM. For example:

- Canada spearheaded the initiative to establish the International Day of the Girl Child, which focused on CEFM in 2012, its first year.
- In October 2013, Canada announced \$5 million in new money to address the causes and consequences of CEFM around the world. These funds were used for programs in Afghanistan, Ethiopia, Ghana, Somalia and Zimbabwe.
- On July 4, 2014, Minister Baird announced that Canada is contributing \$20 million over two years to UNICEF toward ending CEFM. The UNICEF project aims to accelerate the movement to end child marriage in Bangladesh, Burkina Faso, Ethiopia, Ghana, Yemen and Zambia by supporting efforts in these countries to strengthen programming and political support to end the practice.
- Also in July 2014, Canada committed institutional support to the efforts of the Royal Commonwealth Society to raise awareness in Commonwealth countries about the need to end CEFM.
- Canada has played an important role in bringing world attention and action to this issue of CEFM. For example, for the second year, Canada and Zambia will lead a United General Assembly resolution on CEFM in the fall of 2014.
- Canada contributes to efforts to combat female genital mutilation/cutting (FGM) by working with UN agencies, and bilaterally with other countries supporting projects to address violence against women and eliminate harmful cultural practices like FGM.

Canada at home

Canada has taken action to protect vulnerable Canadians, particularly women and girls, from early and forced marriage and other harmful cultural practices. For example:

Citizenship and Immigration Canada (CIC)

- Many **CIC-funded organizations** provide targeted programming designed for specific groups, including women. Newcomer women may benefit from blended workshops, offering an inclusive and open environment to learn and discuss job search strategies and basic information needed to obtain meaningful employment.
- In addition, **special language programs** are available for immigrant and refugee women. CIC-funded language classes cover issues such as family violence, spousal abuse, women's rights, legal rights and responsibilities, health care, and include bridging or referral to other available services in the community.
- Both Canada's citizenship study guide "Discover Canada" and the "Welcome to Canada" orientation guide were recently updated to reflect the fact that Canada's openness and generosity do not extend to harmful practices such as forced marriage or other forms of gender-based family violence.
- CIC also disseminates the brochure "Information for Sponsored Spouses or Partners" to sponsored spouses and partners who are subject to the conditional permanent residence measure. The brochure provides information for those who are subject to the condition and who are victims of abuse or neglect, advising them that they do not have to remain in an abusive situation and informing them how to contact CIC as well as others and where they can find help.

Department of Justice Canada

- Justice Canada and Status of Women Canada co-chair an **interdepartmental working group** on early and forced marriage, "honour"-based violence and female genital mutilation/cutting. The working group has participation from 13 federal departments as well as agencies and acts as a focal point for collaborative actions.
- Since 2009, Justice Canada has held six **sector-specific workshops** on forced marriage and honour-based violence with police, Crown prosecutors, victim services, child protection officials and shelter workers, to assist in front-line capacity-building.
- Justice Canada also funded research papers on forced marriage and "honour" killings, included specific information on these forms of family violence in two public **legal education pamphlets** (one of which – Abuse is Wrong in Any Language – is available in 12 languages) and funded a variety of projects to prevent and respond to forced marriage and "honour"-based violence.
- Justice Canada operates an **emergency fund for Canadians who are victimized abroad** either through homicide, sexual assault, aggravated assault or assault with serious personal violence, including against a child.

Department of Foreign Affairs, Trade and Development (DFATD)

- **Consular Services are available 24 hours a day to Canadian victims** of forced marriage abroad. DFATD provides **information about consular assistance** available to travellers at risk of forced marriage on its travel.gc.ca website.
- Increased awareness building and concrete programming efforts to combat CEFM from a human rights and international development perspective will also support its reduction domestically.

Status of Women Canada (SWC)

- Status of Women Canada launched a call for proposals in 2012, which focused on preventing and eliminating violence against women and girls, including the specific area of violence committed in the name of "honour." It has also provided funding to NGOs to carry out projects addressing forced marriage. Since 2007, a total of over \$2.8 million has been approved through SWC for community-based projects that address harmful cultural practices such as "honour"-based violence and forced marriage.

The Royal Canadian Mounted Police (RCMP)

- The RCMP has developed **online training on forced marriage and "honour"-based violence** for RCMP officers and plans to make it available to municipal police and other agencies through the Canadian Police Knowledge Network in 2014.

Health Canada/Public Health Agency of Canada

- The Public Health Agency of Canada has funded and facilitated the development of *Family Centred-Maternity and Newborn Care: National Guidelines* for health professionals, policy makers, program planners and families. The guidelines address Female Genital Mutilation and stress the need for culturally safe and sensitive care.

Savard, Angela

From: McLeod, Ian W (COMMS)
Sent: 2014-Nov-04 2:09 PM
To: [REDACTED]
Cc: Van Loon, Christina; [REDACTED]
Subject: RE: Zero Tolerance

s.19(1)

Noted. Thanks.

Ian W McLeod
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Department of Justice Canada | Ministère de la Justice du Canada
iwmcLeod@justice.gc.ca
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Government of Canada | Gouvernement du Canada

From: [REDACTED]
Sent: November-04-14 2:08 PM
To: McLeod, Ian W (COMMS)
Cc: Van Loon, Christina; [REDACTED]
Subject: RE: Zero Tolerance

Thks Ian. One thing--our quote in the NR should read "Our Government" as the rest of the quotes do. Tx!

From: McLeod, Ian W (COMMS)
Sent: Tuesday, November 04, 2014 2:00 PM
To: [REDACTED]
Cc: Van Loon, Christina
Subject: RE: Zero Tolerance

Here's what I've received from CIC (French to follow for other products).

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iwmcLeod@justice.gc.ca
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Facsimile | Télécopieur 613-954-0811
Government of Canada | Gouvernement du Canada

From: McLeod, Ian W (COMMS)
Sent: November-04-14 10:51 AM
To: [REDACTED]
Cc: Van Loon, Christina
Subject: RE: Zero Tolerance

I've just asked CIC for the most recent versions (including updated French versions). I should have them shortly.

Ian W. McLeod
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Government of Canada | Gouvernement du Canada

s.19(1)

From: [REDACTED]
Sent: November-04-14 10:44 AM
To: McLeod, Ian W (COMMS)
Subject: RE: Zero Tolerance

Ian, can you send me all the latest products for this svp? Thks!

From: McLeod, Ian W (COMMS)
Sent: Monday, October 27, 2014 5:11 PM
To: [REDACTED]
Cc: [REDACTED] Saville, Suesan; Girouard, Christian; Bolton, Kathy
Subject: RE: Zero Tolerance

Good afternoon,

We've just received the roll-up of our changes and the CIC ministerial-level changes for final signoff. Please let me know if there are any further concerns ASAP (CIC has marked their changes in Track Changes format, and ours are highlighted in teal).

(They've also discarded the backgrounder on specific cases.)

Many thanks,
Ian

Ian W. McLeod
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Government of Canada | Gouvernement du Canada

Gauthier, Amy-Lyne

From: Assad, Michael
Sent: Wednesday, November 05, 2014 3:32 PM
To: * CPAU Group; Nesbitt, Scott
Subject: FW: Senate Introduction of Zero Tolerance for Barbaric Cultural Practices Act

FYI

From: May.Sara [mailto:Sara.May@cic.gc.ca]
Sent: 2014-Nov-05 3:31 PM
To: Day.Chris; NHQ-Comm-Tactics; Galadza.Larisa; Tsai.Maureen; Clarke.Karen; Savard.Fanny; Short.Kaitlin; Hetherington.Erin; Kennedy.Jacqueline; Asbil.Andrea; Yurack, Paul (CIC); CIC-CorpSec-PAU; Laing.Johanna
Cc: Assad, Michael; Blackell, Gillian; Klineberg, Joanne; Hitch, Lisa; McLeod, Ian (PWGSC); 'Marc.Labrom@international.gc.ca'; 'Michael.Berg@international.gc.ca'
Subject: RE: Senate Introduction of Zero Tolerance for Barbaric Cultural Practices Act

Please note that the Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*) is now available on the Parliament of Canada website:

<http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=6761928>

Thank you.

Sara May
NHQ - Departmental Secretariat | AC - Secrétariat ministériel
Citizenship and Immigration Canada | Citoyenneté et Immigration Canada
365 Laurier Avenue West Ottawa ON K1A 1L1 | 365, avenue Laurier Ouest Ottawa ON K1A 1L1
Sara.May@cic.gc.ca
Telephone | Téléphone 613-437-9113
Government of Canada | Gouvernement du Canada

Savard, Angela

From: [REDACTED]
Sent: 2014-Nov-05 8:10 AM
To: McLeod, Ian W (COMMS)
Cc: Van Loon, Christina; [REDACTED]
Subject: RE: Zero Tolerance

Thanks so much Ian!

s.19(1)

From: McLeod, Ian W (COMMS)
Sent: Wednesday, November 05, 2014 7:52 AM
To: [REDACTED]
Cc: Van Loon, Christina; [REDACTED]
Subject: RE: Zero Tolerance

Good morning,

Four projects were funded under the call (I believe these were in the Gs&Cs report last April).

1. 91505-2-5-2-14 South Asian Legal Clinic of Ontario (*Addressing Forced Marriages in Canadian Context: Policy, Education, Training, Awareness and Risk Assessment*) - The project is to advance training, education and awareness on forced marriages by expanding existing legal materials and by providing legal training across Canada. The project will also develop a risk assessment tool that will identify potential cases of forced marriage with the aim of early intervention (\$70,400 in 2014-2015 and \$79,400 in 2015-2016) (GTA)
2. 91505-2-5-2-15 M.O.S.A.I.C. Multicultural Orientations Services (*Enhancing Community Capacity to Respond to and Prevent Forced Marriage*) - The project is to develop a risk assessment framework that can be used to inform service practice and training and work currently being done in the area of violence against women. The risk assessment framework will detail promising practices to prevent and respond to forced marriage. This framework will be designed to educate and train law enforcement, violence service providers, child protection workers, English Language instructors, and other educators, and help establish appropriate strategies for identifying and reporting incidents of forced marriage. (\$64,446 in 2014-2105 and \$68,446 in 2015-2016) (Vancouver)
3. 91505-2-5-2-16 Action et Développement Jeunesse (*Public Legal Education and Information and Awareness Project on Forced Marriages*) (*Projet de vulgarisation d'information juridique et de sensibilisation sur le mariage forcé*) - The project aims to develop public legal information tools on issues related to forced marriages for Francophone immigrant communities. These tools will increase knowledge of Canadian rights and values as it applies to forced marriages, inform about services available to assist victims of forced marriage and their access to the system justice (\$20,172 in 2013-2014; \$74,350 in 2014-2015 and \$68,750 in 2015-2016). (Ottawa)
4. 91505-2-5-2-11 University of Toronto, Faculty of Law (*Forced Marriage: A Curriculum to Cultivate Civic-Minded High Schools Students*) - The project is to develop a high school curriculum on the issue of forced marriage. The curriculum will be designed to initiate discussions on the subject in classroom by introducing key legal aspects pertaining to issues of forced marriages. The objective is to promote an understanding of the law as it

applies to forced marriage in Canada by incorporating it in a teaching unit (\$29,000 in 2014-2015).(GTA)

Please let me know if there's anything further I can help with at this point.

Thanks,
Ian

s.19(1)

From: McLeod, Ian W (COMMS)
Sent: Tuesday, November 04, 2014 6:27 PM
To: [REDACTED]
Cc: Van Loon, Christina; [REDACTED]
Subject: RE: Zero Tolerance

I'm following up with Programs Branch for an updated list from the call for proposals that flowed from the 2013 Throne Speech commitment on forced marriage.

From: [REDACTED]
Sent: Tuesday, November 04, 2014 5:51 PM
To: McLeod, Ian W (COMMS)
Cc: Van Loon, Christina; [REDACTED]
Subject: RE: Zero Tolerance

Question—in QAs “Q4. Stakeholders who have appeared before CIMM regarding better protecting immigrant women have called for practical, concrete changes. What is the Government doing to address these concerns?

The Government has a number of initiatives that are providing vital, concrete support, protection and services for immigrant women and girls.

- *The Department of Justice funds a number of community-based or professional organizations that support projects to address forced marriage and so-called honour-based violence.*

Can you give me some examples of the above?

Thks!

From: McLeod, Ian W (COMMS)
Sent: Tuesday, November 04, 2014 2:00 PM
To: [REDACTED]
Cc: Van Loon, Christina
Subject: RE: Zero Tolerance

Here's what I've received from CIC (French to follow for other products).

Ian W. McLeod
Policy Communications | Communication des politiques
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iwmcLeod@justice.gc.ca
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Facsimile | Télécopieur 613-954-0811
Government of Canada | Gouvernement du Canada

From: McLeod, Ian W (COMMS)
Sent: November-04-14 10:51 AM
To: [REDACTED]
Cc: Van Loon, Christina
Subject: RE: Zero Tolerance

I've just asked CIC for the most recent versions (including updated French versions). I should have them shortly.

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s.19(1)

From: [REDACTED]
Sent: November-04-14 10:44 AM
To: McLeod, Ian W (COMMS)
Subject: RE: Zero Tolerance

Ian, can you send me all the latest products for this svp? Thks!

From: McLeod, Ian W (COMMS)
Sent: Monday, October 27, 2014 5:11 PM
To: [REDACTED]
Cc: [REDACTED] Saville, Suesan; Girouard, Christian; Bolton, Kathy
Subject: RE: Zero Tolerance

Good afternoon,

We've just received the roll-up of our changes and the CIC ministerial-level changes for final signoff. Please let me know if there are any further concerns ASAP (CIC has marked their changes in Track Changes format, and ours are highlighted in teal).

(They've also discarded the backgrounder on specific cases.)

Many thanks,
Ian

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Savard, Angela

From: McLeod, Ian W (COMMS)
Sent: 2014-Nov-05 11:06 AM s.19(1)
To: [REDACTED]
Cc: Van Loon, Christina; Girouard, Christian
Subject: FW: Zero Tolerance - products
Attachments: A - NR_Zero Tolerance Bill Tabling_EN_FINAL.doc; A - NR_Zero Tolerance Bill Tabling_FRE_FINAL.doc; B - BG 1 - Overview of Zero Tolerance Bill_EN_FINAL.doc; B - BG 1 - Overview of Zero Tolerance Bill_FRE_FINAL.doc; C - BG 2 - IRPA and Polygamy_EN_FINAL.doc; C - BG 2 - IRPA and Polygamy_FRE_FINAL.doc; E - BG 3 - Zero Tolerance - OGD initiatives_EN_FINAL.doc; E - BG 3 - Zero Tolerance - OGD initiatives_FRE_FINAL.doc; F - BG 4 - Chart - current vs new approach_EN_FINAL.doc; F - BG 4 - Chart - current vs new approach_FRE_FINAL.doc

Good morning,

Here are the English and French finals of the communications products for the *Zero Tolerance for Barbaric Cultural Practices Act*. These are under embargo until tabling this afternoon.

Thanks,
Ian

Ian W. McLeod
Policy Communications | Communication des politiques
Department of Justice Canada | Ministère de la Justice du Canada
iwmcLeod@justice.gc.ca
Telephone | Téléphone 613-617-8327
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Government of Canada | Gouvernement du Canada

From: Asbil.Andrea [<mailto:Andrea.Asbil@cic.gc.ca>]
Sent: November-05-14 10:24 AM
To: 'Michelle.Saucier@international.gc.ca'; 'Isabelle Chiasson'; 'Julie Grenier'; McLeod, Ian W (COMMS); 'Hasek, Philip'; 'McCammon, Cindy'; Galadza.Larisa; Tsai.Maureen; Clarke.Karen; Blackell, Gillian
Cc: 'Flo.Nguyen@international.gc.ca'; 'Lemieux, Steve'; 'Bianchi, Cristina'; Kennedy.Jacqueline; Savard.Fanny; Soros.Anna; Hetherington.Erin; Short.Kaitlin; Dossiers-Comms-Dockets
Subject: Zero Tolerance - products

Hello,

Attached please find all final public products, in English and French, for today's announcement. Please note that these products are **EMBARGOED** until after the tabling of the Bill in the Senate – at about 2 PM today. Note that live links to the backgrounders from the news release will not be inserted until the products are web-posted.

Regards,

Andrea Asbil
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Citizenship and Immigration Canada | Citoyenneté et Immigration Canada
365 Laurier Avenue West | 365, avenue Laurier Ouest
Ottawa, ON K1A 1L1 | Office | Bureau JETS C1970
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andrea.asbil@cic.gc.ca



News Release

For immediate release

Protecting Canadians from Barbaric Cultural Practices

November 5, 2014 — Ottawa — Today, Canada's Citizenship and Immigration Minister Chris Alexander announced the tabling of legislation that will strengthen Canadian laws to prevent barbaric cultural practices from happening on Canadian soil.

The *Zero Tolerance for Barbaric Cultural Practices Act* sends a clear message to individuals coming to this country that harmful and violent cultural practices are unacceptable in Canada. These practices are incompatible with Canadian values and will not be tolerated.

The Act would amend the *Immigration and Refugee Protection Act* (IRPA), the *Civil Marriage Act* and the *Criminal Code*. It would provide more protection and support for vulnerable immigrants—primarily women and girls—including:

- Creating a new inadmissibility under IRPA that would render permanent residents and temporary residents inadmissible if they practise polygamy in Canada;
- Strengthening Canadian marriage laws by amending the *Civil Marriage Act* to codify the existing legal requirements, at the national level, for “free and enlightened consent” and establishing a new national minimum age for marriage of 16;
- Helping to protect potential victims of early or forced marriages by creating a new specific court-ordered peace bond to be used where there are grounds to fear that a person would commit a forced or early marriage offence, including the mandatory surrendering of a passport to prevent a child from being taken out of the country to facilitate a forced marriage;
- Criminalizing certain conduct related to early and forced marriage ceremonies in the *Criminal Code*, including the act of removing a child from Canada for the purpose of such marriage;
- Limiting the defence of provocation so that it would not apply in so-called “honour” killings and many spousal homicides; and
- Including consequential amendments to the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act* to include the aforementioned peace bond.

These changes build upon existing federal initiatives that are providing vital support, protection and services for newcomers to Canada, specifically women and girls.

Quick facts

- Globally, between 2004 and 2014, an estimated 100 million girls will have been forced to marry before their 18th birthday.
- The 2013 *Speech from the Throne* stated that: "*Sadly, millions of women and girls continue to be brutalized by violence, including through the inhumane practice of early and forced marriage. This barbarism is unacceptable to Canadians. Our government will take steps to ensure that it does not occur on our soil.*"
- For the purposes of this initiative, the term "barbaric cultural practices" encompasses forms of gender-based family violence, such as early, forced and polygamous marriage and "honour"-based violence.
- In 2011, the Supreme Court of British Columbia upheld the constitutionality of the *Criminal Code* prohibition on polygamy (section 293) and found it consistent with the *Canadian Charter of Rights and Freedoms*.

Quotes

"With the *Zero Tolerance for Barbaric Cultural Practices Act*, we are strengthening our laws to protect Canadians and newcomers to Canada from barbaric cultural practices. We are sending a strong message to those in Canada and those who wish to come to Canada that we will not tolerate cultural traditions in Canada that deprive individuals of their human rights. Our government will continue to stand up for all victims of violence and abuse and take necessary action to prevent these practices from happening on Canadian soil."

Chris Alexander, Canada's Citizenship and Immigration Minister

"Our Government has been clear on its stance against polygamy and other barbaric practices that constitute gender-based violence. These important legislative changes build on the work that is already being done to make it clear that family violence—including violence committed in the name of so-called "honour"—is absolutely unacceptable. This Act includes important tools to prevent early and forced marriages and to protect victims from exploitation and violence."

Peter MacKay, Minister of Justice and Attorney General of Canada

"This new legislation reaffirms our Government's ongoing efforts to end violence against women and girls. This includes our investments through Status of Women Canada to give communities the tools they need to end barbaric cultural practices."

Dr. K. Kellie Leitch, Minister of Labour and Minister of Status of Women

"Violence against women and girls is a heinous abuse of human rights and has no place in Canadian society. The *Zero Tolerance for Barbaric Cultural Practices Act* sends a clear message that any form of harmful cultural practices is unacceptable and will not be tolerated. I am proud that our Government continues to take strong action to ensure the equality, safety and security of women and girls in communities all across Canada."

Rona Ambrose, Canada's Health Minister

Related products

Backgrounders:

- 1 – *Zero Tolerance for Barbaric Cultural Practices Act* – An Overview
- 2 – *Zero Tolerance for Barbaric Cultural Practices Act* – Addressing Polygamy
- 3 – Key federal initiatives protecting and supporting vulnerable women and girls
- 4 – Comparative overview of proposed changes in the *Zero Tolerance for Barbaric Cultural Practices Act*

Associated links

Citizenship and Immigration Canada:

Welcome to Canada:

<http://www.cic.gc.ca/english/resources/publications/welcome/index.asp>

Discover Canada:

<http://www.cic.gc.ca/english/resources/publications/discover/index.asp>

Information for Sponsored Spouses or Partners:

<http://www.cic.gc.ca/english/resources/publications/family-sponsorship.asp>

Department of Justice Canada:

Abuse is Wrong in any language

Department of Foreign Affairs, Trade and Development:

Forced Marriage <http://travel.gc.ca/assistance/emergency-info/forced-marriage>

Photos of Minister Alexander available at:

<http://www.cic.gc.ca/english/department/media/photos/index.asp>

– 30 –

Contacts

Kevin Menard

Minister's Office

Citizenship and Immigration Canada

613-954-1064

Media Relations
Communications Branch
Citizenship and Immigration Canada
613-952-1650
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Media Relations
Department of Justice
613-957-4207



Background

Zero Tolerance for Barbaric Cultural Practices Act – Addressing Polygamy

The *Zero Tolerance for Barbaric Cultural Practices Act* proposes the creation of a new inadmissibility under the *Immigration and Refugee Protection Act* (IRPA) for practising polygamy in Canada.

This provision would increase the Government of Canada's ability to prevent polygamy from occurring in Canada. While current IRPA provisions require foreign nationals wishing to become permanent residents to have only one spouse, once in Canada it is difficult to find these individuals inadmissible. A criminal conviction or finding of misrepresentation is currently required before a person practising polygamy can be found inadmissible.

The changes would mean that a polygamist permanent resident or foreign national who is or will be physically present in Canada with even one of their polygamous spouses would be considered to be practising polygamy in Canada. The permanent resident or foreign national could be found inadmissible *on that basis alone*, without requiring evidence that the person misrepresented their situation or has a criminal conviction.

The new inadmissibility would apply in both the temporary and permanent immigration streams. While in the permanent stream, permanent residents will be required to stop practicing polygamy and will only be permitted to immigrate with one monogamous spouse. In the temporary stream, visitors, students and workers who practise polygamy abroad and come to Canada with even one of their spouses, or who join one of their spouses in Canada, would be considered to be practising polygamy on Canadian soil and would be inadmissible under IRPA.



Background

Comparative overview of proposed changes in the *Zero Tolerance for Barbaric Cultural Practices Act*

BEFORE	AFTER
<p>Polygamy—Current admissibility provisions under the <i>Immigration and Refugee Protection Act</i> (IRPA)</p> <p>Permanent resident In the permanent residency stream, a foreign national, when entering Canada and becoming a permanent resident, is permitted to have only one spouse. This requires an individual in a polygamous relationship to convert their marriage to a monogamous relationship.</p> <p>Some permanent resident applicants may try to circumvent the system by taking on an additional spouse at a later date, after they arrive in Canada.</p> <p>In Canada, the permanent resident could only be found inadmissible for practising polygamy if they are convicted in Canada of the criminal offence described under section 293 of the <i>Criminal Code</i> and receive a term of imprisonment of more than six months. A permanent resident may also be found inadmissible for misrepresentation under immigration law, if they lied about being involved in a polygamous relationship when they became a permanent resident.</p>	<p>Polygamy—proposed amendments to admissibility provisions under IRPA</p> <p>In the permanent residency stream, a foreign national who practises polygamy would still be required to convert their polygamous marriage to a monogamous one or be barred from becoming a permanent resident.</p> <p>However, once in Canada, a permanent resident who starts or resumes a polygamous relationship could be found inadmissible on this basis alone, without requiring evidence that the person misrepresented their situation or has a criminal conviction. If found to be inadmissible, the person could then be subject to removal.</p>
<p>Temporary resident A temporary resident who practises polygamy in their country of origin is generally allowed to enter with only</p>	<p>A foreign national seeking temporary residence will be found inadmissible if they try to enter Canada with even one spouse.</p>

one spouse at the time of seeking entry.	
<i>Civil Marriage Act</i>	
<p>Legal requirements to marry The legal requirement for free and enlightened consent to marriage is currently contained in federal legislation that applies in the Province of Quebec only and in common law (court decisions) for residents of other provinces and territories.</p> <p>The minimum age of 16 for marriage, below which no marriage can be contracted, is currently contained in federal legislation that applies in the Province of Quebec only. For the other provinces and territories, the minimum age is not currently provided for in federal legislation and there is some debate about the minimum age in common law, with some establishing the age at 12 for girls and 14 for boys, and others at age seven for all.</p> <p>The legal clarification that any previous marriage must be dissolved prior to a new marriage is currently contained in federal legislation that applies in the Province of Quebec only. (The requirement for monogamy already exists nationally in section 4 of the <i>Civil Marriage Act</i> and is reflected in sections 290, 291 and 293 of the <i>Criminal Code</i>.)</p>	<p>The legal requirement for free and enlightened consent to marriage would now apply nationally to all Canadian residents.</p> <p>A new national minimum age of 16 for marriage, below which no marriage can be contracted, would now apply to all Canadian residents. Legislation in the provinces and territories may set out additional requirements, such as parental consent and consent of the court, for marriages between the national minimum age and the age of majority.</p> <p>The legal clarification that any previous marriage must be dissolved prior to a new marriage would now apply nationally to all Canadian residents.</p>
<i>Criminal Code</i>	
<p>Early and forced marriage Family members can employ a range of techniques to force a marriage onto an unwilling person, both in the time leading up to the marriage and possibly also in connection with the marriage ceremony itself. Family members may also engage in similar</p>	<p>Family members and others would be subject to prosecution where they actively and knowingly participate in a forced or early marriage ceremony, such as by transporting an unwilling or underage daughter to the ceremony or acting as a legal witness. A person who knowingly</p>

conduct to cause an underage child to marry. Wherever the conduct involved amounts to an existing criminal offence—such as uttering threats, assault or forcible confinement—it is subject to prosecution.

Removal of child from Canada

In a situation of a forced or early marriage, family members could be prosecuted for taking steps to remove a child from Canada if the Crown could prove that they did so with the knowledge that, following a forced or early marriage ceremony abroad, the child would be subjected to a sexual offence.

Peace bond

Where there are reasonable grounds to fear that a person—including family members—will cause personal injury to another person, they can be brought to court and ordered to enter into a peace bond (or court order) to keep the peace and be of good behaviour. Other conditions can be imposed, including that the person have no contact with the person who fears for their safety. A person subject to a peace bond could be prosecuted if they breach the order.

Provocation defence

A person who is found to have committed murder can raise the defence of provocation where they killed the victim in the “heat of passion” brought on by a “wrongful act or insult” from the victim that would be sufficient to cause an ordinary person to lose self-control. Individuals who are prosecuted for murder in so-called “honour” killings can raise the defence, if they allege that the victim’s conduct was so insulting and offensive

performs a forced or early marriage ceremony would also be subject to prosecution.

Family members and others would be subject to prosecution where they take steps to **remove a child from Canada specifically with the intent that they be subjected to a forced or early marriage abroad**. The Crown would not have to prove that the family knew there would be a sexual offence following the marriage.

Where there are reasonable grounds to believe that a person will specifically aid or participate in a forced or early marriage ceremony involving someone else (for example, their child), or will take a young person out of Canada for the purposes of a forced or early marriage ceremony abroad, they could be brought to court and ordered to enter into a **peace bond** to keep the peace and be of good behaviour. A court would be empowered to make orders that could be particularly useful in specifically preventing an early or forced marriage, whether in Canada or abroad, such as ordering the person to surrender travel documents, to refrain from making arrangements or agreements in relation to the marriage, or to participate in a family violence counselling program.

The **provocation** defence would only be available to an accused found guilty of murder where the conduct of the victim that provoked the accused to kill amounted to a criminal offence

<p>to them and/or to their family's reputation that it caused them to kill in a state of rage.</p> <p>Where successful, provocation is a defence for murder that results in a conviction for manslaughter. Manslaughter carries a maximum punishment of life in prison and no minimum punishment except if a firearm was used (four years).</p>	<p>punishable by five years or more in prison could qualify.</p> <p>A victim's personal choices about lifestyle or dating or marriage partners, including where such choices were conveyed in a manner perceived as insulting, could not qualify as provocation for the purposes of providing a defence to murder.</p>
<p>Consequential amendments</p>	
<p><i>Criminal Code</i> Paragraph 150.1(2.1)(b) of the <i>Criminal Code</i> provides an exception from criminal liability for what would otherwise be the listed sexual offences involving a child between the ages of 14 and 16 years if the complainant and the accused are married.</p> <p><i>Prisons and Reformatories Act</i> Section 2 of the <i>Prisons and Reformatories Act</i> provides a definition of "prisoner," which in turn permits such persons to be lawfully held in a provincial jail.</p> <p><i>Youth Criminal Justice Act</i> Subsection 14(2) of the <i>Youth Criminal Justice Act</i> gives jurisdiction to a youth justice court to make orders against young persons under the peace bond provisions of the Code.</p> <p>Subsection 142(1) of the <i>Youth Criminal Justice Act</i> provides that the provisions of Part XXVII of the <i>Criminal Code</i> apply to proceedings in respect of peace bonds against young persons.</p>	<p>The bill proposes to repeal paragraph 150.1(2.1)(b) of the <i>Criminal Code</i>, to match the proposed amendments to the <i>Civil Marriage Act</i>, which will prohibit marriages below the age of 16.</p> <p>A person who breaches conditions imposed as part of a peace bond, including the new peace bond where there is a fear that they may commit a forced or early marriage offence, could be lawfully held in a provincial jail.</p> <p>A youth justice court would also have jurisdiction to impose a new peace bond where there is a fear that a young person may commit a forced or early marriage offence.</p> <p>The new peace bond to prevent forced or early marriage, when ordered against a young person, would be governed by the provisions of Part XXVII of the <i>Criminal Code</i> as is the case for other peace bonds.</p>



Communiqué

Pour diffusion immédiate

Protéger les Canadiens contre les pratiques culturelles barbares

Le 5 novembre 2014 — Ottawa — Le ministre de la Citoyenneté et de l'Immigration du Canada, Chris Alexander, a annoncé aujourd'hui le dépôt d'un projet de loi visant à renforcer les lois canadiennes dans le but d'empêcher les pratiques culturelles barbares en sol canadien.

La *Loi sur la tolérance zéro face aux pratiques culturelles barbares* envoie un message clair aux personnes venant au Canada selon lequel les pratiques culturelles dangereuses et violentes sont inacceptables au Canada. Ces pratiques sont contraires aux valeurs canadiennes et ne seront pas tolérées.

La *Loi* modifierait la *Loi sur l'immigration et la protection des réfugiés* (LIPR), la *Loi sur le mariage civil* et le *Code criminel*. Elle permettrait d'offrir plus de protection et de soutien aux immigrants vulnérables, principalement les femmes et les jeunes filles, notamment en :

- créant une nouvelle interdiction de territoire en vertu de la LIPR, qui ferait en sorte que les résidents permanents et temporaires seraient interdits de territoire au Canada s'ils pratiquent la polygamie au Canada;
- renforçant les dispositions législatives canadiennes sur le mariage en modifiant la *Loi sur le mariage civil* afin de codifier à l'échelle nationale les exigences juridiques en vigueur concernant le « consentement libre et éclairé » et en fixant à 16 ans le nouvel âge minimum pour le mariage au Canada;
- aidant à protéger les victimes éventuelles de mariages précoces ou forcés en créant un nouvel engagement de ne pas troubler l'ordre public précis, ordonné par le tribunal, lorsqu'il y a des motifs raisonnables de craindre qu'une personne commettra une infraction liée à un mariage forcé ou précoce, notamment la cession obligatoire du passeport pour empêcher qu'un enfant soit sorti du pays pour faire un mariage forcé;
- criminalisant dans le *Code criminel* certains comportements liés aux cérémonies de mariage précoce et forcé, notamment le passage à l'étranger d'un enfant du Canada dans le but de contracter un tel mariage;
- limitant la défense de provocation afin qu'elle ne s'applique pas aux cas de meurtres « d'honneur » et à de nombreux cas d'homicides conjugaux;

- incluant des modifications corrélatives à la *Loi sur les prisons et les maisons de correction* et à la *Loi sur le système de justice pénale pour les adolescents* de façon à y intégrer l'engagement susmentionné de ne pas troubler l'ordre public.

Ces changements s'appuient sur les initiatives fédérales existantes qui offrent un soutien, une protection et des services essentiels aux nouveaux arrivants au Canada, particulièrement aux femmes et aux jeunes filles immigrantes.

Quelques faits

- Dans le monde, entre 2004 et 2014, environ 100 millions de jeunes filles auront été forcées de se marier avant leur 18^e anniversaire de naissance.
- Le discours du Trône de 2013 énonçait ce qui suit : « Malheureusement, des millions de femmes et de filles sont toujours victimes de violence. La pratique inhumaine du mariage précoce et forcé nous vient à l'esprit. Un tel barbarisme est inacceptable pour les Canadiens et Canadiennes. Notre gouvernement prendra les mesures nécessaires pour que cela ne se produise pas sur notre territoire. »
- Aux fins de la présente initiative, le terme « pratiques culturelles barbares » comprend toutes les formes de violence familiale fondée sur le sexe, notamment les mariages précoces, forcés et polygames et la violence liée à « l'honneur ».
- En 2011, la Cour suprême de la Colombie-Britannique a confirmé la constitutionnalité de l'article du *Code criminel* interdisant la polygamie (art. 293) et a déclaré que l'article était conforme à la *Charte canadienne des droits et libertés*.

Citations

« En adoptant la *Loi sur la tolérance zéro face aux pratiques culturelles barbares*, nous renforçons nos lois afin de protéger les Canadiens et les nouveaux arrivants au Canada contre les pratiques culturelles barbares. Nous envoyons un message clair aux personnes qui sont au Canada ou qui désirent y venir affirmant que nous ne tolérerons pas la pratique de traditions culturelles au Canada qui pourraient priver des personnes de leurs droits naturels. Notre gouvernement continuera à se porter à la défense de toutes les victimes de violence et de mauvais traitements et prendra les mesures qui s'imposent pour empêcher ces pratiques de se dérouler en sol canadien. »

Chris Alexander, ministre de la Citoyenneté et de l'Immigration du Canada

« Le gouvernement a été clair dans sa position sur la polygamie et autres pratiques barbares qui constituent des actes de violence fondée sur le sexe. Ces

modifications législatives importantes sont fondées sur les travaux déjà en cours visant à faire clairement comprendre aux Canadiens que la violence familiale, notamment la violence commise soi-disant au nom de l'honneur, est inacceptable. Cet ensemble de modifications est un outil important pour prévenir les mariages forcés et précoces et pour protéger les victimes contre l'exploitation et la violence. »
Peter MacKay, ministre de la Justice et procureur général du Canada

« Cette nouvelle loi confirme les efforts continus que notre gouvernement déploie pour mettre fin à la violence contre les jeunes filles et les femmes. Mentionnons entre autres le financement qu'il a accordé, par l'entremise de Condition féminine Canada, aux collectivités pour qu'elles se dotent des outils nécessaires afin d'enrayer les pratiques culturelles barbares. »
D^{re} K. Kellie Leitch, ministre du Travail et ministre de la Condition féminine

« La violence envers les femmes et les filles constitue une odieuse atteinte aux droits de la personne. Elle n'a pas sa place dans la société canadienne. La *Loi sur la tolérance zéro face aux pratiques culturelles barbares* fait bien comprendre qu'aucune forme de pratique culturelle nuisible n'est acceptable et ne sera tolérée. Je suis fière que notre gouvernement continue de prendre des mesures énergiques pour garantir l'égalité et la sécurité des femmes et des filles des différentes collectivités partout au Canada. »
Rona Ambrose, ministre de la Santé du Canada

Produits connexes

Documents d'information

- 1 – Aperçu de la *Loi sur la tolérance zéro face aux pratiques culturelles barbares*
- 2 – *Loi sur la tolérance zéro face aux pratiques culturelles barbares* – S'attaquer à la polygamie
- 3 – Principales initiatives fédérales pour la protection et le soutien des filles et des femmes vulnérables
- 4 – Comparaison sommaire des changements proposés dans la *Loi sur la tolérance zéro face aux pratiques culturelles barbares*

Liens connexes

Citoyenneté et Immigration Canada

Bienvenue au Canada :

<http://www.cic.gc.ca/francais/ressources/publications/bienvenue/index.asp>

Découvrir le Canada :

<http://www.cic.gc.ca/francais/ressources/publications/decouvrir/index.asp>

Information à l'intention des époux, conjoints de fait ou partenaires conjugaux parrainés :

<http://www.cic.gc.ca/francais/ressources/publications/parrainage.asp>

Ministère de la Justice du Canada

La maltraitance est inacceptable, peu importe la langue

Ministère des Affaires étrangères, du Commerce et du Développement

Mariage forcé : <http://voyage.gc.ca/assistance/info-d-urgence/mariage-force>

Photos du ministre Alexander :

<http://www.cic.gc.ca/francais/ministere/media/photos/index.asp>

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Personnes-ressources

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Citoyenneté et Immigration Canada
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CIC-Media-Relations@cic.gc.ca

Relations avec les médias

Ministère de la Justice
613-957-4207



Document d'information

Loi sur la tolérance zéro face aux pratiques culturelles barbares – S'attaquer à la polygamie

La *Loi sur la tolérance zéro face aux pratiques culturelles barbares* propose la création d'une nouvelle interdiction de territoire pour motifs de polygamie dans la *Loi sur l'immigration et la protection des réfugiés* (LIPR).

Cette disposition augmenterait la capacité du gouvernement du Canada à prévenir les cas de polygamie au Canada. Bien que les dispositions actuelles de la LIPR exigent des ressortissants étrangers qui souhaitent devenir résidents permanents de n'avoir qu'un seul conjoint, une fois qu'ils sont au Canada, il est difficile de les interdire de territoire. Une condamnation criminelle ou une conclusion de fausse déclaration est actuellement requise pour que les personnes polygames soient jugées interdites de territoire.

Les modifications feraient en sorte qu'un résident permanent ou un étranger polygame qui est ou qui sera effectivement présent au Canada avec un de ses conjoints serait considéré comme pratiquant la polygamie au Canada. Le résident permanent ou l'étranger pourrait être jugé interdit de territoire *pour ce seul motif*, sans qu'il soit nécessaire de prouver qu'il a fait de fausses déclarations sur sa situation ou qu'il ait reçu une condamnation criminelle.

La nouvelle interdiction de territoire s'appliquerait aux volets temporaire et permanent de l'immigration. Dans le volet permanent, les résidents permanents seraient tenus de renoncer à la polygamie et de se convertir à un mariage monogame avant d'être autorisés à immigrer avec un conjoint. Dans le volet temporaire, les visiteurs, les étudiants et les travailleurs qui pratiquent la polygamie à l'étranger et qui viendraient au Canada avec ne serait-ce qu'un seul de leurs conjoints, ou qui viendraient rejoindre un conjoint polygame au Canada, seraient considérés comme pratiquant la polygamie en sol canadien et donc interdits de territoire aux termes de la LIPR.



Document d'information

Comparaison sommaire des changements proposés dans la *Loi sur la tolérance zéro face aux pratiques culturelles barbares*

AVANT	APRÈS
<p>Polygamie – dispositions actuelles de la <i>Loi sur l'immigration et la protection des réfugiés</i> (LIPR) sur l'admissibilité</p>	<p>Polygamie – modifications proposées aux dispositions de la LIPR sur l'admissibilité</p>
<p>Résident permanent Dans la catégorie de la résidence permanente, lorsqu'il entre au Canada et devient un résident permanent, un étranger ne peut avoir qu'un seul époux. Ainsi, une personne vivant dans une relation polygame doit convertir son mariage en une relation monogame.</p> <p>Certains demandeurs du statut de résident permanent pourraient essayer de contourner le système en prenant un époux additionnel plus tard, après leur entrée Canada.</p> <p>Au Canada, un résident permanent ne peut être interdit de territoire pour polygamie que s'il est reconnu coupable, au Canada, de l'infraction criminelle décrite à l'article 293 du <i>Code criminel</i> et reçoit une peine d'emprisonnement de plus de six mois. Un résident permanent peut aussi être interdit de territoire pour fausses déclarations en vertu du droit de l'immigration s'il a menti au sujet de sa relation polygame lorsqu'il est devenu résident permanent.</p>	<p>Dans la catégorie de la résidence permanente, un étranger qui pratique la polygamie devrait toujours convertir sa relation polygame en une relation monogame, à défaut de quoi il ne pourra pas devenir résident permanent.</p> <p>Cependant, une fois au Canada, un résident permanent qui entreprend ou reprend une relation polygame sera interdit de territoire pour ce seul motif, sans qu'il soit nécessaire de prouver qu'il a fait de fausses déclarations sur sa situation ou qu'il ait reçu une condamnation criminelle. Une personne jugée interdite de territoire pourrait faire l'objet d'une mesure de renvoi.</p>
<p>Résident temporaire Un résident temporaire qui pratique la</p>	<p>Un étranger cherchant à obtenir la résidence temporaire ne sera pas</p>

<p>polygamie dans son pays d'origine peut généralement entrer au Canada avec un seul époux au moment de demander son admission au Canada.</p>	<p>admissible s'il essaie d'entrer au Canada ne serait-ce qu'avec un seul conjoint.</p>
<p>Loi sur le mariage civil</p>	
<p>Obligations légales pour se marier L'obligation légale de consentement libre et éclairé pour le mariage est actuellement incluse dans la législation fédérale qui s'applique au Québec seulement ainsi que dans la common law (décisions des tribunaux) pour les résidents des autres provinces et territoires.</p> <p>L'âge minimum de 16 ans pour le mariage, en dessous duquel aucun mariage ne peut être célébré, est actuellement inclus dans la législation fédérale qui s'applique au Québec seulement. Dans les autres provinces et territoires, l'âge minimum n'est pas prévu dans la législation fédérale, et il existe un débat, concernant l'âge minimum selon la common law, certains établissent l'âge à douze ans pour les filles et à quatorze ans pour les garçons, et d'autres, à sept ans pour tous.</p> <p>Une clarification juridique portant que tout mariage antérieur doit être dissout avant qu'un nouveau mariage puisse être célébré est actuellement incluse dans la loi fédérale qui s'applique au Québec seulement. (L'obligation de monogamie existe déjà, à l'échelle nationale, dans l'article 4 de la <i>Loi sur le mariage civil</i> et on en traite dans les articles 290, 291 et 293 du <i>Code criminel</i>.)</p>	<p>L'obligation légale de consentement libre et éclairé pour le mariage s'appliquerait dorénavant à tous les résidents du Canada.</p> <p>Un nouvel âge minimum de 16 ans pour le mariage, en dessous duquel aucun mariage ne pourrait être célébré, s'appliquerait dorénavant à tous les résidents du Canada. Les lois des provinces et des territoires pourraient prévoir d'autres exigences, comme le consentement des parents et le consentement du tribunal, pour les mariages entre l'âge minimum national et l'âge de la majorité.</p> <p>Une clarification juridique portant que tout mariage antérieur doit être dissout avant qu'un nouveau mariage puisse être célébré s'appliquerait dorénavant à l'échelle nationale, à tous les résidents du Canada.</p>
<p>Code criminel</p>	
<p>Mariage précoce et mariage forcé Les membres de la famille peuvent</p>	<p>Les membres de la famille et d'autres personnes pourraient faire l'objet de</p>

avoir recours à une variété de moyens pour forcer une personne à se marier contre son gré, avant le mariage et même possiblement en lien avec la cérémonie elle-même. Les membres de la famille peuvent aussi adopter des comportements similaires pour forcer à se marier un enfant qui n'en a pas l'âge. Si le comportement en cause constitue une infraction criminelle existante – la profération de menaces, les voies de fait ou la séquestration, par exemple – il pourrait entraîner des poursuites.

Passant d'un enfant à l'étranger

Dans un cas de mariage forcé ou précocé, les membres de la famille pourraient faire l'objet de poursuites s'ils prennent des dispositions en vue de faire passer un enfant à l'étranger, si la Couronne peut prouver qu'ils l'ont fait sachant qu'après un mariage forcé ou précocé célébré à l'étranger, l'enfant serait victime d'une infraction à caractère sexuel.

Engagement de ne pas troubler l'ordre public

Lorsqu'il existe des motifs raisonnables de croire qu'une personne – y compris un membre de la famille – pourrait en blesser une autre, elle peut être traînée en justice, et une ordonnance pourrait être rendue à son endroit afin qu'elle signe un engagement (ou une ordonnance) de ne pas troubler l'ordre public et d'avoir une bonne conduite. D'autres conditions peuvent lui être imposées, notamment qu'elle n'ait aucun contact avec la personne qui craint pour sa sécurité. Une personne visée par un engagement de ne pas troubler l'ordre public pourrait être poursuivie si elle

poursuites s'ils **participent activement et sciemment à la célébration d'un mariage forcé ou précocé**, notamment en emmenant à la cérémonie une fille qui refuse ou n'est pas en âge de se marier, ou en servant de témoin. Une personne qui célèbre sciemment un mariage forcé ou précocé pourrait aussi être poursuivie.

Les membres de la famille et d'autres personnes pourraient faire l'objet de poursuites lorsqu'ils prennent des dispositions en vue de **faire passer un enfant à l'étranger spécifiquement en vue de célébrer un mariage forcé ou précocé à l'étranger**. La Couronne n'aurait pas à prouver que la famille savait qu'une infraction à caractère sexuel serait commise à la suite du mariage.

Lorsqu'il y a des motifs raisonnables de croire qu'une personne aidera ou participera expressément à la cérémonie d'un mariage forcé ou précocé impliquant une autre personne (par exemple son enfant), ou qu'elle emmènera cette jeune personne en dehors du Canada afin de la marier de force ou de célébrer un mariage précocé à l'étranger, elle pourrait être traînée en justice, et une ordonnance pourrait être rendue à son endroit afin qu'elle signe un **engagement de ne pas troubler l'ordre public** et d'avoir une bonne conduite. Un tribunal pourrait être habilité à rendre des ordonnances qui seraient particulièrement utiles pour

<p>ne respecte pas les conditions de l'ordonnance.</p> <p>Défense de provocation Une personne déclarée coupable de meurtre peut invoquer la défense de provocation lorsqu'elle a tué sa victime « dans le feu de l'action », à la suite d'une « action injuste » posée par la victime ou d'une « insulte » lancée par celle-ci, et que cette action ou insulte était suffisante pour pousser une personne ordinaire à perdre la maîtrise d'elle-même. Dans les cas de crimes d'« honneur », les personnes accusées de meurtre peuvent invoquer cette défense si elles allèguent que le comportement de la victime était si insultant ou offensant pour elles ou la réputation de la famille qu'il les a poussées à commettre un meurtre sous l'effet d'une forte colère.</p> <p>Lorsqu'elle est acceptée, dans les affaires de meurtre, la défense de provocation donne lieu à une condamnation pour homicide involontaire coupable. L'homicide involontaire coupable entraîne une peine maximale d'emprisonnement à vie, mais sans peine minimale obligatoire, sauf dans le cas où une arme à feu a été utilisée (quatre (4) ans).</p>	<p>prévenir expressément un mariage précoce ou forcé, au Canada ou à l'étranger, notamment ordonner à une personne de remettre ses documents de voyage, de ne pas prendre d'arrangements ou conclure d'ententes ayant trait au mariage, ou de participer à un programme de sensibilisation à la violence familiale.</p> <p>Un accusé pourrait invoquer la défense de provocation seulement lorsqu'il est reconnu coupable de meurtre dans le cas où le comportement de la victime qui a poussé l'accusé à la tuer équivaut à une infraction criminelle punissable d'au moins cinq (5) ans d'emprisonnement.</p> <p>Les choix personnels d'une victime au sujet de son style de vie, les personnes qu'elle fréquente ou la personne avec qui elle se marie, même si ces choix peuvent être perçus comme une insulte, ne pourraient être considérés comme de la provocation pour soulever cette défense en cas de meurtre.</p>
<p>Modifications corrélatives</p>	
<p>Code criminel L'alinéa 150.1(2.1)b) du <i>Code criminel</i></p>	<p>Le projet de loi propose d'abroger l'alinéa 150.1(2.1)b) du <i>Code criminel</i></p>

prévoit une exception à la responsabilité criminelle pour ce qui serait autrement une infraction sexuelle énumérée impliquant des adolescents âgés de 14 à 16 ans si le plaignant et l'accusé sont mariés.

Loi sur les prisons et les maisons de correction

L'article 2 de la *Loi sur les prisons et les maisons de correction* contient une définition de « prisonnier », qui permet aux personnes d'être détenues légitimement dans une prison provinciale.

Loi sur la justice pénale pour les adolescents

Aux termes du paragraphe 14(2) de la *Loi sur la justice pénale pour les adolescents*, un tribunal pour adolescents a compétence pour rendre des ordonnances à l'encontre d'une jeune personne en vertu des dispositions du *Code criminel* relatives aux engagements de ne pas troubler l'ordre public.

Le paragraphe 142(1) de la *Loi sur le système de justice pénale pour les adolescents* prévoit que les dispositions de la partie XXVII du *Code criminel* s'appliquent aux procédures relatives aux engagements de ne pas troubler l'ordre public pris à l'encontre de jeunes personnes.

pour tenir compte des modifications proposées à la *Loi sur le mariage civil*, qui interdira les mariages de personnes âgées de moins de 16 ans.

Une personne qui enfreint les conditions qui lui sont imposées dans un engagement de ne pas troubler l'ordre public, notamment les nouveaux engagements de ne pas troubler l'ordre public dans les cas où il y a lieu de craindre qu'elle puisse commettre une infraction en lien avec un mariage forcé ou précocé, pourrait être détenue légitimement dans une prison provinciale.

Un tribunal pour adolescents serait également compétent pour imposer un nouvel engagement de ne pas troubler l'ordre public lorsqu'il y a lieu de craindre qu'une jeune personne puisse commettre une infraction en lien avec un mariage forcé ou précocé.

Lorsqu'il est pris à l'encontre d'un adolescent, le nouvel engagement de ne pas troubler l'ordre public visant à empêcher un mariage forcé ou précocé, serait régi par les dispositions de la partie XXVII du *Code criminel*, comme dans le cas des autres engagements de ne pas troubler l'ordre public.



Background

Zero Tolerance for Barbaric Cultural Practices Act: An Overview

The *Zero Tolerance for Barbaric Cultural Practices Act* demonstrates that Canada's openness and generosity does not extend to early and forced marriage, polygamy or other types of barbaric cultural practices. Canada will not tolerate any type of violence against women or girls, including spousal abuse, violence in the name of so-called "honour", or other, mostly gender-based violence. Those found guilty of these crimes are severely punished under Canada's criminal laws.

To deliver on the Government's commitment to standing up for victims of violence and abuse and to send a strong message to those in Canada—and those wishing to come to Canada—that such practices will not be tolerated on Canadian soil, the Government is proposing to amend five federal statutes:

Immigration and Refugee Protection Act

Address polygamy through the creation of a new polygamy-specific inadmissibility provision in the *Immigration and Refugee Protection Act*, meaning:

- temporary residents and permanent residents who practise polygamy in Canada could be found inadmissible on that basis alone, without the need for a criminal conviction; and
- if found to be inadmissible, the person could then be subject to removal.

Civil Marriage Act

Make amendments to the *Civil Marriage Act* to legislate across Canada two existing legal requirements for a valid marriage:

- the requirement for free and enlightened consent (proposed section 2.1); and
- the requirement for ending an existing marriage prior to entering another (proposed section 2.3).

These legal requirements currently exist in federal legislation that applies in the Province of Quebec only (sections 5 and 7 of the *Federal Law–Civil Law Harmonization Act, No. 1*) and in common law (court decisions) for residents of other provinces and territories.

The bill would also establish a new national minimum age for marriage of 16, below which no marriage could be contracted (proposed section 2.2). This legal

requirement currently exists only in federal legislation that applies in the Province of Quebec (section 6 of the *Federal Law–Civil Law Harmonization Act, No. 1*). The common law (court decisions) applying to residents of other provinces and territories is sometimes interpreted as setting a minimum age of 14 for boys and 12 for girls, and historically sometimes as low as age 7. This proposed amendment would provide equal protection to all Canadian children by setting the minimum age to age 16 across Canada.

Additional legal protections for children between the new minimum age for marriage and the age of majority, set by the province or territory of residence at 18 or 19 years of age, are found in provincial and territorial marriage laws. These laws currently require parental consent (and in some instances also the consent of a judge) to ensure that the child fully understands the legal consequences of marriage in those exceptional circumstances where a child would be mature enough to marry. Canada's Minister of Justice has asked his provincial and territorial counterparts to consider making complementary amendments to their marriage laws to ensure that children are uniformly protected by requiring a judge to make the proper inquiries, in addition to parental consent, in the case of any marriage involving a child between the age of 16 and the age of majority.

Criminal Code

Amend the *Criminal Code* to provide additional protections building on the proposed amendments to the *Civil Marriage Act* to prevent forced or underage marriages. The proposed amendments would:

- amend the existing offence for a legally-authorized officiant who knowingly solemnizes a marriage contrary to provincial law (section 295) to clarify that this also includes a marriage that is contrary to federal law, including a forced marriage or a marriage under the age of 16—this offence will be punishable by up to two years in prison;
- create a new offence prohibiting the active and knowing participation in a forced marriage ceremony by any person, including parents or other family members of the person being forced to marry, or the performance of a forced marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.1)—this offence will be punishable by a maximum of five years in prison;
- create a new offence prohibiting the active and knowing participation in a marriage ceremony involving a person under the age of 16, by any person, including parents or other family members of the person who is underage, or the performance of an underage marriage ceremony, whether or not the person is legally authorized to solemnize a marriage (proposed section 293.2)—this offence will be punishable by a maximum of five years in prison;
- extend the existing offence of removing a child from Canada for the purpose of having certain offences committed abroad to include the removal of a

- child for the purpose of a forced marriage or a marriage under the age of 16 outside of Canada (proposed paragraph 273.3(1)(d))—this offence will be punishable by a maximum of five years in prison; and
- introduce a new peace bond that gives the court power to impose conditions on a person where there are reasonable grounds to fear that a forced marriage or a marriage under the age of 16 will otherwise occur (proposed section 810.02).

The Bill would also amend the *Criminal Code* to address concerns that the defence of provocation (section 232) has been raised in several so-called “honour” killing cases in Canada. These cases involved accused persons who killed their wife, sister or sister’s fiancé and alleged that the killing was motivated by their perception that the victims had brought “dishonour” to them or their family through their conduct or choices, taking into account their culture’s views about appropriate gender roles and behaviour.

The defence of provocation currently allows a person found to have committed murder (which carries a mandatory sentence of life in prison and minimum parole ineligibility periods) to seek a conviction of manslaughter instead (with no minimum sentence unless a firearm is used) by arguing that the victim’s conduct provoked them to lose self-control and kill.

Currently, any conduct by the victim—including insults and other forms of offensive behaviour that are lawful—can potentially qualify as provocation if it is found to be sufficient to cause an ordinary person to lose self-control, the accused was not expecting it and the killing was sudden. The proposed amendment would limit the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family “honour” or reputation, cannot be used to reduce murder to manslaughter. Only conduct by the victim that amounts to a relatively serious criminal offence (i.e. an offence under the *Criminal Code* punishable by at least 5 years in prison) could be argued to be “provocation” for the purposes of the defence.

Consequential amendments

Consequential amendments resulting from the above-mentioned changes will also be made to the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act* to include references to the new peace bond.



Background

Key Federal Initiatives Protecting and Supporting Vulnerable Women and Girls

The Bill would complement existing Canadian initiatives, both at home and abroad, to put an end to barbaric cultural practices that go against Canadian values because they cause harm to women and girls and prevent their full participation in society. These practices, which include early and forced marriage, "honour"-based violence and female genital mutilation/cutting, have no place in Canada's free and democratic society. Some of Canada's initiatives to end these practices are set out below.

Canada on the international stage

Canada has made ending child, early and forced marriage (CEFM) a foreign policy and development priority and is intensifying programming and advocacy efforts to address CEFM. For example:

- Canada spearheaded the initiative to establish the International Day of the Girl Child, which focused on CEFM in 2012, its first year.
- In October 2013, Canada announced \$5 million in new funding to address the causes and consequences of CEFM around the world. These funds were used for programs in Afghanistan, Ethiopia, Ghana, Somalia and Zimbabwe.
- On July 4, 2014, Minister Baird announced that Canada is contributing \$20 million over two years to UNICEF toward ending CEFM. The UNICEF project aims to accelerate the movement to end child marriage in Bangladesh, Burkina Faso, Ethiopia, Ghana, Yemen and Zambia by supporting efforts in these countries to strengthen programming and political support to end the practice.
- Also in July 2014, Canada committed institutional support to the efforts of the Royal Commonwealth Society to raise awareness in Commonwealth countries about the need to end CEFM.
- Canada has played an important role in bringing world attention and action to this issue of CEFM. For example, for the second year, Canada and Zambia will lead a United General Assembly resolution on CEFM in the Fall of 2014.
- Canada contributes to efforts to combat female genital mutilation/cutting (FGM) by working with UN agencies, and bilaterally with other countries

supporting projects to address violence against women and eliminate harmful cultural practices like FGM.

Canada at home

Canada has taken action to protect vulnerable Canadians, particularly women and girls, from early and forced marriage and other harmful or violent cultural practices. For example:

Citizenship and Immigration Canada (CIC)

- Many **CIC-funded organizations** provide targeted programming designed for specific groups, including women. Newcomer women may benefit from blended workshops, offering an inclusive and open environment to learn and discuss job search strategies and basic information needed to obtain meaningful employment.
- In addition, **special language programs** are available for immigrant and refugee women. CIC-funded language classes cover issues such as family violence, spousal abuse, women's rights, legal rights and responsibilities, health care, and include bridging or referral to other available services in the community.
- Both Canada's citizenship study guide "Discover Canada" and the "Welcome to Canada" orientation guide were recently updated to reflect the fact that Canada's openness and generosity do not extend to harmful cultural practices such as forced marriage or other forms of gender-based family violence.
- CIC also disseminates the brochure "Information for Sponsored Spouses or Partners" to sponsored spouses and partners who are subject to the conditional permanent residence measure. The brochure provides information for those who are subject to the condition and who are victims of abuse or neglect, advising them that they do not have to remain in an abusive situation and informing them how to contact CIC as well as others and where they can find help.

Department of Justice Canada

- Justice Canada and Status of Women Canada co-chair an **interdepartmental working group** on early and forced marriage, "honour"-based violence and female genital mutilation/cutting. The working group has participation from 13 federal departments as well as agencies and acts as a focal point for collaborative actions.

- Since 2009, Justice Canada has held six **sector-specific workshops** on forced marriage and honour-based violence with police, Crown prosecutors, victim services, child protection officials and shelter workers, to assist in front-line capacity-building.
- Justice Canada also funded research papers on forced marriage and "honour" killings, included specific information on these forms of family violence in two public **legal education pamphlets** (one of which – *Abuse is Wrong in Any Language* – is available in 12 languages) and funded a variety of projects to prevent and respond to forced marriage and "honour"-based violence.
- Justice Canada operates an **emergency fund for Canadians who are victimized abroad** either through homicide, sexual assault, aggravated assault or assault with serious personal violence, including against a child.

Department of Foreign Affairs, Trade and Development (DFATD)

- **Consular Services are available 24 hours a day to Canadian victims** of forced marriage abroad. DFATD provides **information about consular assistance** available to travellers at risk of forced marriage on its travel.gc.ca website.
- Increased awareness building and concrete programming efforts to combat CEFM from a human rights and international development perspective will also support its reduction domestically.

Status of Women Canada (SWC)

- Status of Women Canada launched a call for proposals in 2012, which focused on preventing and eliminating violence against women and girls, including the specific area of violence committed in the name of "honour." It has also provided funding to NGOs to carry out projects addressing forced marriage. Since 2007, a total of over \$2.8 million has been approved through SWC for community-based projects that address harmful cultural practices such as "honour"-based violence and forced marriage.

The Royal Canadian Mounted Police (RCMP)

- The RCMP has developed **online training on forced marriage and "honour"-based violence** for RCMP officers and plans to make it available to municipal police and other agencies through the Canadian Police Knowledge Network in 2014.

Health Canada/Public Health Agency of Canada

- The Public Health Agency of Canada has funded and facilitated the development of Family Centred-Maternity and Newborn Care: National Guidelines for health professionals, policy makers, program planners and families. The guidelines address Female Genital Mutilation and stress the need for culturally safe and sensitive care.



Document d'information

Aperçu de la *Loi sur la tolérance zéro face aux pratiques culturelles barbares*

La *Loi sur la tolérance zéro face aux pratiques culturelles barbares* démontre que l'ouverture et la générosité du Canada excluent les mariages précoces ou forcés, la polygamie ou d'autres types de pratiques culturelles barbares. Le Canada ne tolérera aucune forme de violence contre les femmes ou les filles, y compris la violence conjugale, la violence liée à « l'honneur » ou d'autres actes de violence fondée surtout sur le sexe. Les personnes coupables de tels crimes sont sévèrement punies en vertu des lois canadiennes.

Pour mettre en œuvre l'engagement du gouvernement du Canada à défendre les victimes de violence et de mauvais traitements et pour envoyer un message clair aux personnes vivant au Canada et à celles qui souhaitent y venir, selon lequel de telles pratiques ne seront pas tolérées en sol canadien, le gouvernement propose de modifier les cinq lois fédérales suivantes :

Loi sur l'immigration et la protection des réfugiés

S'attaquer à la polygamie en créant une nouvelle interdiction de territoire propre à la polygamie dans la *Loi sur l'immigration et la protection des réfugiés*, qui :

- interdirait de territoire, et pour le seul motif de polygamie, les résidents temporaires et permanents qui pratiquent la polygamie au Canada, sans qu'ils aient reçu une condamnation criminelle; et
- une personne jugée interdite de territoire pourrait faire l'objet d'une mesure de renvoi.

Loi sur le mariage civil

Apporter des modifications à la *Loi sur le mariage civil* pour :

Édicter à l'échelle pancanadienne deux exigences juridiques en vigueur pour la validité d'un mariage :

- l'exigence du consentement libre et éclairé (article 2.1 proposé);
- l'obligation de mettre fin à un mariage existant avant d'en contracter un autre (article 2.3 proposé).

Ces exigences juridiques existent actuellement dans une loi fédérale qui ne s'applique que dans la province de Québec (articles 5 et 7 de la *Loi d'harmonisation n° 1 du droit fédéral avec le droit civil*), et dans la common law (décisions des tribunaux) pour les résidents des autres provinces et territoires.

Le projet de loi établirait aussi à 16 ans le nouvel âge minimal à l'échelle nationale pour le mariage, en dessous duquel aucun mariage ne serait valide (article 2.2 proposé). Cette exigence juridique existe actuellement dans une loi fédérale qui ne s'applique que dans la province de Québec (article 6 de la *Loi d'harmonisation n° 1 du droit fédéral avec le droit civil*). La common law (décisions des tribunaux) pour les résidents des autres provinces et territoires est parfois interprétée comme établissant l'âge minimal du mariage à 14 ans pour les garçons et à 12 ans pour les filles – et par le passé, à aussi jeune que 7 ans. Cette modification proposée prévoit une protection égale à tous les enfants canadiens en fixant à 16 ans l'âge minimal du mariage à l'échelle du Canada.

Les protections juridiques pour les enfants entre le nouvel âge minimal du mariage et l'âge de la majorité, fixé par la province ou le territoire de résidence à 18 ou 19 ans, se trouvent dans les lois provinciales et territoriales sur le mariage. Ces lois exigent actuellement le consentement des parents (et dans certains cas le consentement d'un juge également) pour s'assurer que l'enfant comprend parfaitement les conséquences juridiques du mariage, dans les circonstances exceptionnelles où un enfant serait assez mature pour se marier. Le ministre de la Justice du Canada a demandé à ses homologues provinciaux et territoriaux d'envisager d'apporter des modifications complémentaires à leurs lois sur le mariage afin de s'assurer que les enfants sont uniformément protégés. En plus d'exiger le consentement des parents, ces modifications requerraient qu'un juge procède aux enquêtes appropriées dans le cas d'un mariage d'un enfant ayant entre 16 ans et l'âge de la majorité.

Code criminel

Modifier le *Code criminel* afin de prévoir des protections supplémentaires dans le cadre des modifications proposées à la *Loi sur le mariage civil* pour empêcher les mariages forcés ou précoces. Voici ce que permettraient les modifications proposées :

- Modifier l'infraction actuelle à l'encontre d'un célébrant légalement autorisé qui célèbre sciemment un mariage contraire à la loi provinciale (article 295), de façon à préciser que l'infraction vise aussi les mariages contraires au droit fédéral, y compris un mariage forcé ou un mariage de personnes de moins de 16 ans – cette infraction sera passible d'une peine pouvant aller jusqu'à deux ans de prison.
- Créer une nouvelle infraction interdisant à toute personne, y compris les parents ou d'autres membres de la famille, de participer activement et sciemment à la cérémonie d'un mariage forcé, ou de célébrer un mariage

forcé, que le célébrant soit légalement autorisé ou non à présider un mariage (article 293.1 proposé) – cette infraction sera passible d'une peine d'emprisonnement maximale de cinq ans.

- Créer une nouvelle infraction interdisant à toute personne, y compris les parents ou d'autres membres de la famille, de participer activement et sciemment à la cérémonie de mariage d'une personne de moins de 16 ans, ou de célébrer un mariage de personnes de moins de 16 ans, que le célébrant soit légalement autorisé ou non à présider un mariage (article 293.2 proposé) – cette infraction sera passible d'une peine d'emprisonnement maximale de cinq ans.
- Élargir l'infraction actuelle liée au passage à l'étranger d'un enfant dans le but d'y permettre la commission de certaines infractions, de façon à y inclure le passage d'un enfant à l'étranger aux fins de la tenue d'un mariage forcé ou d'un mariage de personnes de moins de 16 ans à l'étranger (alinéa 273.3(1)d) proposé) – cette infraction sera passible d'une peine d'emprisonnement maximale de cinq ans.
- Introduire un nouvel engagement de ne pas troubler l'ordre public qui donne au tribunal le pouvoir d'imposer des conditions à une personne lorsqu'il existe des motifs raisonnables de craindre qu'un mariage forcé ou un mariage de personnes de moins de 16 ans serait tenu autrement (article 810.02 proposé).

Le projet de loi modifierait également le *Code criminel* afin de répondre aux préoccupations selon lesquelles l'argument de la provocation a été invoqué en défense (article 232) de crimes « d'honneur » au Canada. Ces cas mettaient en cause des personnes accusées d'avoir assassiné leur épouse ou leur sœur (en plus du fiancé de ladite sœur) et alléguaient que le meurtre avait été motivé par leur perception selon laquelle les victimes les avaient « déshonorés » ou avaient déshonoré leur famille par leur comportement ou leur choix, en soulignant le point de vue de leur culture sur les rôles et les comportements appropriés aux deux sexes.

La défense de provocation permet actuellement à une personne reconnue coupable de meurtre (ce qui entraîne une peine obligatoire d'emprisonnement à vie et des périodes limitées de libération conditionnelle) de demander qu'on la reconnaisse plutôt coupable d'homicide involontaire (non assorti d'une peine minimale, à moins qu'une arme à feu ait été utilisée) en faisant valoir que le comportement de la victime l'a provoqué à perdre le contrôle et à tuer.

Actuellement, tout comportement de la victime – notamment des insultes et d'autres formes de comportements offensants qui sont légitimes – peut se qualifier comme provocation s'il est jugé suffisant pour amener une personne ordinaire à perdre la maîtrise de soi, si l'accusé a été pris par surprise et si le meurtre a été subit. La modification proposée permettrait de limiter la défense de provocation de façon à ce que les comportements légitimes de la victime pouvant être perçus par l'accusé comme une insulte, ou comme l'ayant offensé, ou ayant offensé son sens de

l'honneur familial ou sa réputation, ne puissent pas être invoqués pour réduire un meurtre à un homicide involontaire. Seuls les comportements d'une victime qui équivalent à une infraction criminelle relativement grave (soit une infraction au *Code criminel* passible d'une peine d'au moins 5 ans de prison) pourraient être considérés comme de la « provocation » pour les besoins de la défense.

Modifications corrélatives

Des modifications corrélatives résultant des modifications mentionnées ci-dessus seront également apportées à la *Loi sur les prisons et les maisons de correction* et à la *Loi sur le système de justice pénale pour les adolescents*, en vue d'inclure des références au nouvel engagement de ne pas troubler l'ordre public.



Document d'information

Principales initiatives fédérales pour la protection et le soutien des filles et des femmes vulnérables

Le projet de loi vient compléter les initiatives canadiennes en cours, tant au pays qu'à l'étranger, visant à mettre fin aux pratiques culturelles qui vont à l'encontre des valeurs canadiennes, qui portent préjudice aux femmes et aux filles et les empêchent de contribuer pleinement à la société. Ces pratiques, qui comprennent les mariages précoces et forcés, la violence liée à « l'honneur » et la mutilation génitale féminine, n'ont pas leur place dans la société libre et démocratique du Canada. Certaines des initiatives du Canada pour mettre fin à ces pratiques sont exposées ci-dessous.

Le Canada sur la scène internationale

Le Canada a fait de l'élimination du mariage d'enfants, du mariage précoce et du mariage forcé (MEPF) une priorité en matière de politique étrangère et de développement. Il a augmenté le nombre de ses programmes et de ses actions pour lutter contre le MEPF. En voici une liste :

- Le Canada a dirigé l'initiative visant à établir la Journée internationale des filles qui, durant sa première année d'existence, en 2012, avait le MEPF comme thème.
- En octobre 2013, le Canada a annoncé un nouveau financement de 5 millions de dollars pour soutenir des programmes qui aident à remédier aux causes et aux conséquences du MEPF dans le monde entier, notamment en Afghanistan, en Éthiopie, au Ghana, en Somalie et au Zimbabwe.
- Le 4 juillet 2014, le ministre Baird a annoncé que le Canada verserait 20 millions de dollars sur une période de deux ans à l'UNICEF pour l'éradication du MEPF. Le projet de l'UNICEF vise à renforcer le mouvement qui lutte pour mettre fin au MEPF au Bangladesh, au Burkina Faso, en Éthiopie, au Ghana, au Yémen et en Zambie en appuyant les efforts déployés dans ces pays pour renforcer les programmes et l'appui politique nécessaires pour mettre fin à cette pratique.
- Également en juillet 2014, le Canada s'est engagé à apporter un soutien institutionnel à la Royal Commonwealth Society (RCS) dans le cadre des efforts de cette dernière pour sensibiliser les pays du Commonwealth à la nécessité de mettre fin au MEPF.
- Le Canada a contribué de façon importante à attirer l'attention du monde entier sur le MEPF et à encourager la prise de mesures pour y remédier.

Par exemple, pour une deuxième année, le Canada et la Zambie piloteront une résolution de l'Assemblée générale des Nations Unies sur le mariage d'enfants, le mariage précoce et le mariage forcé à l'automne 2014.

- Le Canada participe aux efforts déployés pour lutter contre la mutilation génitale féminine en travaillant de concert avec des organismes des Nations Unies, et bilatéralement avec d'autres pays qui appuient des projets visant à contrer la violence faite aux femmes et à éradiquer des pratiques culturelles préjudiciables telles que la mutilation génitale féminine.

Le Canada au pays

Le Canada a pris des mesures pour protéger ses citoyens vulnérables, notamment les femmes et les filles, contre les mariages précoces et forcés et d'autres pratiques culturelles préjudiciables ou violentes. Par exemple :

Citoyenneté et Immigration Canada (CIC)

- Plusieurs **organisations financées par CIC** fournissent des programmes ciblés conçus pour des groupes précis, notamment les femmes. Les femmes nouvellement arrivées au pays peuvent bénéficier d'ateliers mixtes, qui offrent un environnement inclusif et ouvert où elles peuvent discuter et acquérir des connaissances sur les stratégies de recherche d'emploi et d'autres informations de base requises pour obtenir un emploi convenable.
- De plus, des **cours de langues particuliers** sont offerts aux immigrantes et aux réfugiées. Les cours de langues financés par CIC traitent de sujets comme la violence familiale, la violence conjugale, les droits de la femme, les droits et obligations légales, les soins de santé, et ils permettent le rapprochement avec d'autres services offerts dans la collectivité, et le renvoi à ces derniers.
- Le Guide d'étude pour la préparation à l'examen de citoyenneté canadienne intitulé « Découvrir le Canada » et le guide d'orientation « Bienvenue au Canada » ont récemment été mis à jour pour indiquer que l'ouverture et la générosité du Canada excluent les pratiques culturelles barbares qui tolèrent le mariage forcé ou d'autres formes de violence familiale fondée sur le sexe.
- CIC distribue également la brochure « Information à l'intention des époux, conjoints de fait ou partenaires conjugaux parrainés » aux conjoints et partenaires parrainés assujettis à la mesure de résidence permanente conditionnelle. Cette brochure informe les personnes assujetties à la mesure conditionnelle et qui sont victimes de mauvais traitements ou de négligence qu'elles n'ont pas à demeurer dans une situation de mauvais traitements et leur indique comment entrer en contact avec CIC et d'autres organismes et où elles peuvent trouver de l'aide.

Justice Canada

- Justice Canada et Condition féminine Canada coprésident un **groupe de travail interministériel** sur le mariage précoce et forcé, la violence liée à « l'honneur » et la mutilation génitale féminine. Le groupe de travail réunit 13 ministères et organismes fédéraux et sert de point de convergence pour mener des actions concertées.
- Depuis 2009, Justice Canada a tenu six **ateliers sectoriels** sur le mariage forcé et la violence liée à « l'honneur » auprès de services de police, de procureurs de la Couronne, de services aux victimes, de responsables de la protection des enfants et de personnes travaillant dans les refuges, afin d'aider à établir une capacité de première ligne.
- Justice Canada a également financé des recherches sur le mariage forcé et les meurtres « d'honneur ». Il a aussi inclus dans deux **dépliants de vulgarisation et d'information juridiques** des renseignements particuliers sur ces formes de violence familiale (un de ces dépliants, *La maltraitance est inacceptable, peu importe la langue*, est disponible en 12 langues); il a financé une gamme de projets visant à prévenir les mariages forcés et les actes de violence liée à « l'honneur » et à intervenir quand de tels actes sont commis.
- Justice Canada administre un **fonds d'urgence pour les Canadiens à l'étranger** – y compris les enfants – **qui sont victimes** d'homicide, d'agression sexuelle, de voies de fait graves et d'infraction grave avec violence contre la personne.

Ministère des Affaires étrangères, du Commerce et du Développement (MAECD)

- **Des services consulaires sont offerts 24 heures par jour, sept jours par semaine pour les victimes canadiennes** d'un mariage forcé se trouvant à l'étranger. Le MAECD fournit des **informations sur l'aide consulaire** disponible aux voyageurs qui risquent de se trouver dans une situation de mariage forcé sur son site Web (voyage.gc.ca).
- Des efforts accrus sur le plan de la sensibilisation et des programmes concrets pour lutter contre le MEPF, du point de vue des droits de la personne et du développement international, contribueront aussi à la réduction de ces pratiques au pays.

Condition féminine Canada

- Condition féminine Canada (CFC) a lancé en 2012 un appel de propositions axé sur la prévention et l'élimination de la violence à l'endroit des femmes

et des filles, notamment dans le domaine précis de la violence liée à « l'honneur ». Il a également financé des ONG afin qu'elles mènent des projets liés au mariage forcé. Depuis 2007, plus de 2,8 millions de dollars ont été octroyés par l'entremise de CFC à des projets communautaires pour la lutte contre les pratiques culturelles barbares, telles que la violence liée à « l'honneur » et le mariage forcé.

La Gendarmerie royale du Canada (GRC)

- La GRC a mis au point une **formation en ligne sur le mariage forcé et la violence liée à « l'honneur »** à l'intention des agents de la GRC et prévoit la rendre disponible aux services de police municipaux et à d'autres organismes par l'entremise du Réseau canadien du savoir policier en 2014.

Santé Canada/Agence de la santé publique du Canada (SC/ASPC)

- Placée sous l'égide de l'ASPC et financé par cette agence, la publication *Les soins à la mère et au nouveau-né : lignes directrices nationales* est destinée aux professionnels de la santé, aux décideurs, aux concepteurs de programmes et aux familles. Le guide traite de la mutilation génitale féminine et insiste sur la nécessité d'offrir des soins qui tiennent compte de la sécurité et des sensibilités culturelles.

Gauthier, Amy-Lyne

From: Oda, Michael
Sent: Wednesday, November 19, 2014 10:00 AM
To: [REDACTED]
Cc: Assad, Michael; Gauthier, Amy-Lyne
Subject: S-7 Deck

s.19(1)

Hi [REDACTED]

Courtesy of Michael Assad, please find attached the electronic copies of the deck for S-7. I believe that a hard copy was forwarded to you this morning as well.



H - Deck - FRE - Oct 20 2014.... H - Deck - Eng- Oct. 14, 2014 ...

Thanks,

Michael Oda

Analyst / Analyste
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 Citoyenneté et Immigration Canada Citizenship and Immigration Canada



Citoyenneté et Immigration Canada

***Loi sur la tolérance
zéro face aux
pratiques culturelles
barbares***



Canada



Face aux pratiques culturelles barbares

- Dans le discours du Trône de 2013, le gouvernement s'est engagé à redoubler d'efforts pour empêcher la tenue de mariages précoces et forcés au Canada, ainsi que toute autre forme de pratique culturelle préjudiciable.
- La présentation d'aujourd'hui a pour but d'expliquer pourquoi il est nécessaire d'apporter des changements afin de mieux protéger et d'aider les Canadiens et Canadiennes vulnérables, en particulier les femmes et jeunes filles immigrantes, et d'éviter qu'elles soient victimes de telles pratiques.





Changements

- Les mariages précoces et forcés, la violence liée à « l'honneur » et la polygamie ont lieu au Canada, et les conséquences pour les victimes peuvent être très graves, voire fatales. Les femmes au Canada, incluant les femmes immigrantes, peuvent être confrontées à de nombreux obstacles lorsqu'il s'agit de se protéger et d'obtenir de l'aide.
 - 219 cas de mariage forcé ont été signalés en Ontario entre 2010 et 2012 - dans 92 % de ces cas, la victime était de sexe féminin, et dans 30 % d'entre eux, il s'agissait de filles âgées de 12 à 18 ans;
 - 100 demandes d'aide consulaire de la part de Canadiens concernant des mariages forcés depuis 2009;
 - il y a eu au moins 20 cas de personnes condamnées pour homicide au Canada comportant des indications que le meurtre était lié à l'honneur familial; et
 - plus de 1 000 personnes vivent au sein de la communauté polygame de Bountiful (C.B.), dont certaines pourraient avoir été amenées au pays afin « d'épouser » des résidents canadiens.





Modifications à la *Loi sur le mariage civil*

À l'heure actuelle

- Il n'y a pas d'âge minimum pour le mariage au Canada.
- Au Québec, législation fédérale (16 ans). Partout ailleurs, l'âge minimum en vertu de la common law varie entre 7 et 14 ans. Les PT ont prévu des exigences additionnelles pour les mariages de personnes n'ayant pas atteint l'âge de la majorité (18 ou 19 ans) (p. ex. le consentement des parents ou l'approbation des tribunaux).

Des modifications sont proposées à la *Loi sur le mariage civil* pour :

- codifier les exigences liées au consentement libre et éclairé et à la dissolution du mariage précédent;
- fixer à 16 ans l'âge minimum national pour le mariage.





Modifications au *Code criminel*

À l'heure actuelle

- Les dispositions actuelles du *Code criminel* régissent l'utilisation de la force ou la menace d'utiliser la force, qui sont habituellement employées pour forcer une personne à se marier contre son gré.

Modifications proposées

- Les modifications proposées viendraient combler les vides juridiques en criminalisant :
 - le fait de célébrer sciemment un mariage précocement ou forcé;
 - le fait de participer sciemment et activement à une cérémonie de mariage où l'une des parties n'est pas consentante ou est âgée de moins de 16 ans;
 - le fait d'obliger un enfant à quitter le Canada aux fins d'un mariage forcé ou d'un mariage d'enfants dans un autre pays.
- En outre, des modifications sont proposées en vue de créer des « engagements de nonparticipation à tout mariage forcé ou précocement » pour éviter que ces crimes se produisent au Canada; tout manquement à ces engagements constituerait une infraction criminelle.





La violence liée à l'honneur de « l'honneur »

- La violence liée à « l'honneur » est perpétrée contre un membre de la famille qui est perçu comme ayant fait honte à la famille ou comme l'ayant déshonorée.

À l'heure actuelle

- Les dispositions actuelles du *Code criminel* couvrent toutes les infractions associées à la violence liée à l'honneur, incluant les voies de fait, les menaces, la séquestration, l'harcèlement criminel, l'homicide et l'incitation à commettre le suicide.
- Pour la détermination de la peine, les «circonstances aggravantes» prévues dans le *Code* s'appliquent déjà à la violence liée à l'honneur.





Modification au *Code criminel*

- La défense de « l'honneur » en invoquant une provocation a été soulevée dans plusieurs cas de meurtres « d'honneur » au Canada. Même si l'argument n'a pas tenu la route à ce jour, la disponibilité de cette défense donne à penser que le fait de commettre un meurtre en réaction à une conduite irrespectueuse ou offensante pourrait être un facteur atténuant dans les affaires de meurtre.


Modifications proposées:

- Le projet de loi propose de limiter la défense afin qu'elle s'applique uniquement aux cas où la conduite de la victime ayant « provoqué » le meurtre constituait une infraction criminelle punissable d'un emprisonnement maximal d'au moins cinq ans. Cela ferait en sorte que la gravité des meurtres d'« honneur » ou autres meurtres en réaction à une insulte présumée ou à une conduite irrespectueuse ou offensante ne soit jamais atténuée.



- 
- 
- La polygamie est une forme de mariage qui implique plus de deux personnes, et constitue une infraction en vertu du *Code criminel*.

À l'heure actuelle

- Les non-citoyens qui pratiquent la polygamie au Canada peuvent être déclarés interdits de territoire s'ils sont reconnus coupables ou s'il est établi qu'ils ont fait de fausses déclarations.
 - Les non-citoyens qui pratiquent la polygamie à l'étranger doivent adopter une relation monogame pour pouvoir entrer au Canada et obtenir la résidence permanente.
- 








l'immigration et la protection des

- **Le projet de loi propose des modifications** visant à améliorer les mécanismes actuels en matière d'immigration de façon à empêcher les noncitoyens qui pratiquent la polygamie de venir au Canada ou d'y séjourner en :
 - précisant qu'il est interdit aux résidents temporaires et permanents de pratiquer la polygamie au Canada.
- Cela permettra de refuser les demandes de visa ou de prendre des mesures de renvoi contre ceux qui sont jugés interdits de territoire.
- Les visiteurs qui pratiquent la polygamie à l'étranger doivent cesser de la pratiquer et ils ne seront autorisés à voyager au Canada que s'ils sont seuls, c.à.d. sans aucun(e) de leurs époux(ses).



- Les modifications à la *Loi sur l'immigration et la protection des réfugiés* et au *Code criminel* entreront en vigueur à la date fixée par décret du gouverneur en conseil.
- Les modifications à la *Loi sur le mariage civil* entreront en vigueur après avoir reçu la sanction royale.

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- Le projet de loi serait complémentaire à d'autres initiatives gouvernementales qui visent à fournir protection et soutien aux femmes et aux filles vulnérables;
 - À l'échelle internationale, le Canada a abordé la question du mariage d'enfants, de mineurs ou forcé dans sa politique étrangère et en a fait une priorité en matière de développement (initiatives fructueuses en cours);
 - Au Canada, le gouvernement collabore avec les P et T, ainsi qu'avec des partenaires non gouvernementaux pour fournir soutien, protection et services aux femmes et aux filles immigrantes.
- 





Questions?



Citizenship and
Immigration Canada

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Immigration Canada

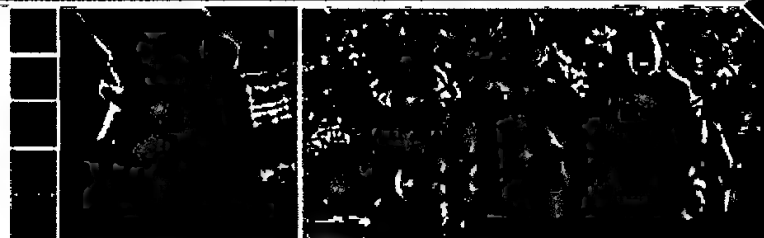
Canada

 Citizenship and Immigration Canada Citoyenneté et Immigration Canada



Citizenship and Immigration Canada

*Zero Tolerance for
Barbaric Cultural
Practices Act*



Canada



Barbaric Cultural Practices Act


- In the 2013 Speech from the Throne, the Government committed to strengthening efforts to prevent early and forced marriage and other harmful cultural practices from happening in Canada.
- This presentation will explain why changes are needed to better protect and support vulnerable Canadians, particularly immigrant women and girls, from such practices.



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- Early and forced marriage, so-called “honour”-based violence and polygamy are occurring in Canada with severe and even fatal consequences. Women in Canada, including immigrant women, can face a number of barriers in protecting themselves and in getting help.
 - 219 reported cases of forced marriages in Ontario between 2010 and 2012 - 92% of these cases involved female victims, with 30% involving girls between the ages of 12 and 18;
 - 100 requests for consular assistance from Canadians related to forced marriage since 2009;
 - at least 20 people were convicted in Canada of homicide where there was some indication that the killing was related to family honour; and
 - more than 1,000 people living in the polygamous community of Bountiful, B.C., some may have been brought into the country to “marry” Canadian residents.





Marriage Act Amendments

Current Status:

- No national minimum age for marriage in Canada.
- In Quebec, federal legislation (age 16). Elsewhere, common law minimum age between 7 and 14. PTs have set additional requirements for marriages under the age of majority (18 or 19) (e.g. for parental consent or court approval).

Amendments are proposed to the *Civil Marriage Act* to:

- codify requirements for free and enlightened consent and dissolution of previous marriage; and
- set a national minimum marriage age of 16.





Criminal Code Amendments

Current Status:

- Existing *Criminal Code* provisions already cover the use or threats of force typically used to make a person marry against their will.

Proposed amendments

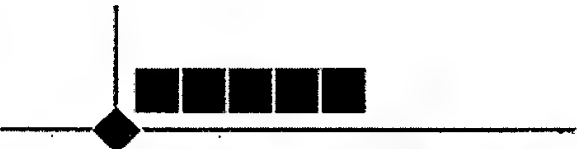

- Proposed amendments would fill gaps in the law by criminalizing:
 - Knowingly officiating an early or forced marriage;
 - Knowingly and actively participating in a wedding ceremony in which one party is marrying against their will or is under 16; and
 - The removal of a child from Canada for a forced or early marriage.
- In addition, amendments are proposed to create a forced or early marriage peace bond to prevent these crimes from happening; breaching the new peace bond would be a crime.




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- So-called “honour”- based violence is perpetrated against family members perceived to have brought shame or dishonour to the family.

Current Status:

- Existing *Criminal Code* provisions cover all criminal conduct associated with “honour” -based violence, including assault, threats, forcible confinement, criminal harassment, homicide, counselling suicide.
 - For sentencing, the existing “aggravating circumstances” in the *Code* already apply to “honour”- based violence.
- 





Criminal Code Amendment

- The defence of provocation has been raised in several cases of so-called “honour” killings in Canada. Though unsuccessful to date, the availability of the defence sends the message that killing in anger in response to insulting or offensive behaviour mitigates murder.


Proposed Amendments:

- The bill proposes to limit the defence so that it would only apply where the victim's conduct that “provoked” the killing constituted a criminal offence punishable by at least 5 years in prison. This would ensure that killings in response to perceived insulting, offensive or disrespectful conduct never mitigates an “honour” killing or other similar killings.



- 
- 
- Polygamy is defined as a form of marriage involving more than two people and is an offence under the *Criminal Code*.

Current Status:

- Non-citizens who practise polygamy in Canada may be found inadmissible if convicted or if there is a finding of misrepresentation.
 - Non-citizens who practise polygamy abroad must stop practising polygamy and will only be permitted to immigrate with one monogamous spouse.
- 








Refugee Protection Act Amendment

- **The bill proposes** to enhance existing immigration tools to prevent non-citizens practising polygamy from coming to or staying in Canada by:
 - specifying that temporary residents and permanent residents are inadmissible for practising polygamy in Canada.
- This will enable the refusal of visa applications or allow removal orders to be made against those who are determined to be inadmissible.
- Visitors who practise polygamy legally in their home country could only enter Canada if travelling without any spouse.



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- 
- Amendments to the *Immigration and Refugee Protection Act* and to the *Criminal Code* will come into force on a day to be fixed by order of the Governor in Council.
 - Amendments to the *Civil Marriage Act* will come into force upon Royal Assent.

- 
- The bill would complement other government initiatives that are protecting and supporting vulnerable women and girls.
 - Internationally, Canada has made ending child, early and forced marriage a foreign policy and development priority, with many successful initiatives underway.
 - Domestically, the government is working with PTs and non-governmental partners to provide support, protection and services for immigrant women and girls.





Questions?



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Immigration Canada

Canada

Gauthier, Amy-Lyne

From: Assad, Michael
Sent: Tuesday, November 25, 2014 10:56 AM
To: [REDACTED] Lafleur, Eric s.19(1)
Cc: * CPAU Group
Subject: Bill S-7 (ZTBCP) - Request for Additional Material
Attachments: Forced Marriage in International Treaties.docx; Bill S-7 & Report on Forced Marriage.docx

Good morning,

Please find attached the material you requested regarding Bill S-7, which include a Summary of points and arguments that relate to Bill S-7 in the Report on the Practice of Forced Marriage in Canada (2008) by Naïma Bendriss, as well as the International Conventions and Declarations recognized by Canada in relation to forced marriage.

These have been approved by DMO.

Thank you,

Michael Assad
Senior Analyst / Analyste principal
Cabinet and Parliamentary Affairs Unit / Unité des affaires du Cabinet et parlementaires

Ministerial Secretariat / Secrétariat ministériel
Justice Canada
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michael.assad@justice.gc.ca

Forced Marriage: International Conventions and Declarations Recognized by Canada:

1. *Universal Declaration of Human Rights*¹

Article 16 (2) Marriage shall be entered into only with the free and full consent of the intending spouses.

2. *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*²

Article 16(1) States Parties....shall ensure, on a basis of equality of men and women:

(a) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

Article 16(2) The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

3. *Convention on the Rights of the Child (CRC)*³

While early forced marriage is not referred to in the CRC, child marriage is frequently addressed by the CRC Committee in their Concluding Observations for States Parties.

4. *International Covenant on Civil and Political Rights (ICCPR)*⁴

Article 23(3) No marriage shall be entered into without the free and full consent of the intending spouses.

5. *International Covenant on Economic, Social and Cultural Rights (ICESCR)*⁵

Article 10(1)...Marriage must be entered into with the free consent of the intending spouses.

6. *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*⁶

Article 1 Each of the States Parties to this Convention shall ... bring about ... the complete abolition or abandonment of the following institutions and practices ... :

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

¹ Adopted by the United Nations General Assembly in 1948.

² Entered into force in 1981; ratified by Canada in 1981.

³ Entered into force in 1990; ratified by Canada in 1991.

⁴ Entered into force in 1976; acceded to by Canada in 1976.

⁵ Entered into force in 1976; acceded to by Canada in 1976.

⁶ Entered into force in 1957; ratified by Canada in 1963.

(iii) A woman on the death of her husband is liable to be inherited by another person;
Article 2 With a view to bringing to an end the institutions and practices mentioned in article 1 (c) of this Convention, the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.

Canada has not acceded to the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*⁷

Article 1(1) No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.

(2) Notwithstanding anything in paragraph 1 above, it shall not be necessary for one of the parties to be present when the competent authority is satisfied that the circumstances are exceptional and that the party has, before a competent authority and in such manner as may be prescribed by law, expressed and not withdrawn consent.

Article 2 States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.

⁷ Entered into force 1964.

Summary of points and arguments that relate to Bill S-7 in the *Report on the Practice of Forced Marriage in Canada (2008)* by Naïma Bendriss

The following points were raised in the report that have been responded to through Bill S-7 (the italicized portion sets out how Bill S-7 relates to the points raised):

- Canada has given little attention to the question of forced marriages. There is no specific approach to deal with forced marriage. *(Bill S-7 provides a legal framework to respond to forced marriages)*
- Service providers interviewed for this report, indicated that it is the government's duty to address the problem of forced marriage and to protect those who are threatened with it or are already its victims. They expressed hope that government will enact legislation and regulations to counter this practice and take effective steps to make communities aware of the problems forced marriage causes. *(The proposed legislative amendments can serve as a basis for further awareness raising and outreach with community groups)*
- Many women who are threatened with or have been in a forced marriage are unaware of their rights. *(The proposed legislative amendments can serve as a basis for further awareness raising)*
- A forced marital relationship has profound physical, psychological and emotional effects on its victims. It hinders personal growth and fulfilment. In addition to violating rights to personal freedom, the practice is a barrier to the education and empowerment of young girls. *(The harm associated with a forced marriage is recognized in the proposed offence of active participation in a forced marriage ceremony)*
- There have been incidents of forced marriage where the victim was forced into a polygamous marriage. *(Bill S-7 address both the harms of forced and polygamous marriages)*
- In some communities in which honour is considered to be extremely important, marriage is the institution in which family honour is most strongly invested. It is through marriage that a person's and family's social standing is maintained. Parents sometimes use a whole range of pressure tactics, from surveillance to emotional blackmail and death threats to achieve their goal of marrying their child to someone they chose for them, disregarding their child's wishes. *(Bill S-7 also addresses so-called "honour" killings by proposing to restrict the application of the defence of provocation)*

Recommendations in the report not directly addressed by Bill S-7 (the italicized portion identifies other ways that the Government of Canada is responding to these recommendations):

- The government should earmark funds to create education programs, produce work tools and provide training for field workers. *(A recent Justice Canada call for proposals on forced marriage has resulted in funding of \$474,964 over the next three years for four*

projects related to awareness raising, risk assessments tool and training for front-line workers)

- There should be a national awareness and prevention campaign to inform people about this problem, including information pamphlets and posters. *(The proposed legislative amendments in Bill S-7 can serve as a basis for further awareness raising)*
- Mechanisms such as shelters and telephone helplines should be created to help people dealing with forced marriage. *(Justice Canada held a workshop on forced marriage with shelter workers in 2013, however funding for shelters is a matter of provincial jurisdiction)*
- More funding is needed for counselling services for forced marriage victims. *(This is a matter of provincial jurisdiction)*
- An information kit on forced marriage should be produced for teachers and students. *(Education falls under provincial jurisdiction)*
- Legal information sessions should be offered for parents and youth stressing that forced marriage is contrary to the law and infringes human rights as well as women's rights. *(Information about forced marriage is included in the revised Justice Canada "Abuse is Wrong in any Language" brochure (2012) that is available in 12 languages and used by newcomer services across the country)*
- Forced marriage victims should be able to annul their marriage without any time limit and without placing the burden of proof on them. *(This is a matter of provincial jurisdiction)*
- Value judgments should be avoided about the communities where the practice exists. *(Justice Canada has worked with the RCMP to develop on-line training for police on forced marriage and "honour" - based violence which contains clear messaging about the importance of not negatively stigmatizing minority communities)*

Gauthier, Amy-Lyne

From: LeBlanc, Eric
Sent: Monday, December 01, 2014 11:42 AM
To: [REDACTED]
Cc: * CPAU Group s.19(1)
Subject: Bill S-7 (Zero Tolerance for Barbaric Cultural Practices Act): TPs

Bonjour [REDACTED]

Please find attached a copy of the requested TPs on Bill S-7, the Provocation Defence as well as on the new offence ("aids"/"participates"), as approved by DMO.

Please let us know if you have any questions or concerns. Thanks,



Talking points on Talking points on
provocation ... aids partici...

Eric LeBlanc
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Gouvernement du Canada | Government of Canada



Department of Justice
Canada

Ministère de la Justice
Canada

Protected

Talking Points Provocation Defence

IF ASKED ABOUT WHETHER PROVOCATION CAN CURRENTLY APPLY TO HONOUR KILLINGS

- **There is nothing in Canadian criminal law that currently prevents the provocation defence from being successfully raised in future honour-killing cases.**
- **Most honour-killings are believed to be premeditated. If the Crown can prove premeditation, the defence of provocation will not succeed.**
- **But some killings that may be characterized as honour-killings can be spontaneous reactions to something unexpectedly said or done by the victim. The provocation defence may be available in this kind of spontaneous killing.**
- **For instance, if a teenage girl refuses to marry the person her parents have chosen for her and expresses her refusal in a manner that insults her parent's values, religion or culture, this could potentially generate a state of rage in a parent during which the parent allegedly kills in the heat of passion.**
- **In these circumstances, the provocation defence can certainly be raised, and could potentially be successful.**

***IF ASKED ABOUT THE EXISTING LIMITATION OF PROVOCATION
WHERE THE VICTIM HAD A LEGAL RIGHT TO DO SOMETHING***

- According to the *Criminal Code*, one cannot be legally provoked if the victim does something that they have a "legal right" to do.
- It is important to understand how this is interpreted. This does not mean that all lawful conduct cannot amount to provocation. The Supreme Court has been very clear that this only means that something that is *expressly legally authorized*, such as using force in self-defence, cannot be provocation.
- Provocation is frequently raised, and is sometimes successful, where the victim's conduct is entirely lawful, such as verbal insults or offensive gestures.

***IF ASKED ABOUT PROVOCATION AS AN HISTORICAL PRINCIPLE
OR ABOUT THE APPLICATION OF THE DEFENCE WHERE THE
PROVOCATION IS RACIAL SLURS OR ASSAULTS***

- It is true that the provocation defence dates back many centuries. But the historical era from which it originates was one where a woman was in law her husband's property, and in the words of one court in 1707, adultery, which was a recognized ground for raising provocation, was regarded as "the highest invasion of property". [*R. v. Mawgridge* (1707) 84 E.R. 1107]
- Feminist scholars, criminal law academics, the Supreme Court of Canada, United Nations bodies, and law reform commissions in every common law jurisdiction have detailed many concerns with the

defence of provocation, including that it partly blames victims for causing their own deaths, it diminishes personal responsibility for homicidal violence, and it excuses male violence against women.

- **These concerns have prompted virtually every common law jurisdiction except for Canada to legislatively limit or abolish their provocation defence in the past 10 years.**
- **In Canada, many men on trial for murdering their current or former partners do raise the provocation defence. It is not successful very often, but it has been successful in some cases where the alleged provocation was entirely lawful behaviour, such as terminating the relationship, wanting an abortion, infidelity, or mere verbal insults.**
- **The time has come to stop excusing spousal homicides prompted by lawful behaviour.**
- **Under the proposed amendments, criminal acts punishable by at least 5 years in prison can still qualify as provocation under the proposed amendment. Assault is punishable by up to 5 years in prison, as is the crime of uttering threats. These and many other criminal offences will still be grounds for raising the provocation defence.**
- **While racial slurs are morally and socially unacceptable, they are not unlawful, and should not in law excuse a deliberate killing.**



Protected

Talking Points

New Forced/Early Marriage-Related Offence

IF ASKED ABOUT THE OFFENCE OF KNOWINGLY AIDING OR PARTICIPATING IN A FORCED OR EARLY MARRIAGE

- **Bill S-7 proposes new offences for knowingly aiding or participating in a forced or early marriage ceremony.**
- **The term “knowing” in the proposed offence requires specific knowledge by the accused that one of the parties to the marriage was either under the age of 16 or marrying against their will.**
- **Actual knowledge must be proved by the Crown beyond a reasonable doubt. It is not enough to prove that the accused “should have known” or that they suspected, but remained uncertain.**
- **It would be too challenging to identify and itemize all the specific forms of conduct that could help such marriage ceremonies take place. For this reason, the terms “aids” and “participates” are used in the proposed offence.**
- **These terms are more general in that they encompass any physical conduct that is coupled with an intention to help the ceremony take place.**
- **Based on existing jurisprudence applicable to these concepts in other contexts, mere passive presence at**

such a marriage would not be culpable; rather, some deliberate action would be required, such as driving an unwilling bride to the ceremony or acting as a lawful witness to a marriage.

DRAFT

Van Loon, Christina

From: Van Loon, Christina
Sent: 2014-Dec-05 9:50 AM
To: [REDACTED] McLeod, Ian W (COMMS); Girouard, Christian
Cc: [REDACTED]
Subject: RE: Message

Categories: Minister's Office

Hello [REDACTED]

We have confirmed it should be OK for tomorrow. The newswire part can be done today under embargo until a specific time tomorrow, and the web posting can be done tomorrow.

No word yet on exact timing tomorrow but we'll tell you as soon as we hear.

Christina

-----Original Message-----

From: [REDACTED]
Sent: 2014-Dec-05 9:31 AM
To: Van Loon, Christina; McLeod, Ian W (COMMS)
Cc: [REDACTED]
Subject: RE: Message

Ok thanks. Is someone able to post it from DOJ tomorrow?

-----Original Message-----

From: Van Loon, Christina
Sent: Friday, December 05, 2014 9:29 AM
To: [REDACTED] McLeod, Ian W (COMMS)
Cc: [REDACTED]
Subject: RE: Message

We have just been advised by PCO that the PM statement needs to go first and won't be going until tomorrow, so they say we cannot issue today. They will follow up with us about timing for tomorrow - we will let you know as soon as we hear.

s.19(1)

-----Original Message-----

From: [REDACTED]
Sent: 2014-Dec-05 9:16 AM
To: Van Loon, Christina; McLeod, Ian W (COMMS)
Cc: [REDACTED]
Subject: RE: Message

All good, thanks.

-----Original Message-----

From: Van Loon, Christina
Sent: Friday, December 05, 2014 9:16 AM
To: [REDACTED] McLeod, Ian W (COMMS)

Cc: [REDACTED]
Subject: RE: Message

We've just been advised that the content of the message is fine -- they are just checking on timing of the PM message and will let us know if there is any issue with noon. Let us know if you still want the text in an email.

-----Original Message-----

From: [REDACTED]
Sent: 2014-Dec-05 9:15 AM
To: Van Loon, Christina; McLeod, Ian W (COMMS)
Cc: [REDACTED]
Subject: RE: Message

s.19(1)

Can you copy and paste the last version in an email, I will check on my side as well. Thks ;)

-----Original Message-----

From: Van Loon, Christina
Sent: Friday, December 05, 2014 8:59 AM
To: [REDACTED] McLeod, Ian W (COMMS)
Cc: [REDACTED]
Subject: RE: Message

We'll pass that on to PCO in hopes of shaking things loose. Thanks very much.

-----Original Message-----

From: [REDACTED]
Sent: 2014-Dec-05 8:59 AM
To: Van Loon, Christina; McLeod, Ian W (COMMS)
Cc: [REDACTED]
Subject: Re: Message

Noon would be good.

----- Original Message -----

From: Van Loon, Christina
Sent: Friday, December 05, 2014 08:51 AM
To: [REDACTED] McLeod, Ian W (COMMS)
Cc: [REDACTED]
Subject: Re: Message

Hi [REDACTED]

We haven't received PCO approval yet. Following up and will let you know as soon as we hear. Did you have a time in mind?

Christina

----- Original Message -----

From: [REDACTED]
Sent: Friday, December 05, 2014 08:45 AM
To: [REDACTED] McLeod, Ian W (COMMS)
Cc: [REDACTED] Van Loon, Christina

Subject: RE: Message

Ian, what time will it go out?

-----Original Message-----

From: [REDACTED]
Sent: Wednesday, December 03, 2014 1:16 PM
To: McLeod, Ian W (COMMS)
Cc: [REDACTED] Van Loon, Christina
Subject: RE: Message

Ian, just remove the sentence " Our Charter was passed over 30 years ago, but our experience since then shows that constitutional guarantees are not enough, there is so much more to do." Svp. Thanks!

-----Original Message-----

From: [REDACTED] s.19(1)
Sent: Monday, December 01, 2014 9:27 PM
To: McLeod, Ian W (COMMS)
Cc: [REDACTED] Van Loon, Christina
Subject: RE: Message

Ian, I'm s stickler for tracked changes, can you flip with them pls?

-----Original Message-----

From: McLeod, Ian W (COMMS)
Sent: Monday, December 01, 2014 12:22 PM
To: [REDACTED]
Cc: [REDACTED] Van Loon, Christina
Subject: RE: Message

Hi [REDACTED]

I've incorporated your changes, and made some edits based on your concerns. Let me know if there's anything further.

Thanks,
Ian

Ian W. McLeod
Policy Communications | Communication des politiques Department of Justice Canada | Ministère de la Justice du
Canada iwmcleod@justice.gc.ca Telephone | Téléphone 613-617-8327 Facsimile | Télécopieur 613-954-0811
Government of Canada | Gouvernement du Canada

-----Original Message-----

From: [REDACTED]
Sent: November-29-14 7:08 AM
To: McLeod, Ian W (COMMS)
Cc: [REDACTED] Van Loon, Christina
Subject: Re: Message

Thanks Ian. Just something that points to the work that we do that touches this important issue. It may just be at the beginning of the para re what our Gov is doing, depending on how many of those projects we've worked on. "The Department of Justice works tirelessly...or is dedicated to ensuring that women..." I want to highlight our work and the DOJ's commitment on this...

----- Original Message -----

From: McLeod, Ian W (COMMS)

Sent: Saturday, November 29, 2014 06:46 AM

To: [REDACTED] s.19(1)

Cc: [REDACTED] Van Loon, Christina

Subject: RE: Message

Hi [REDACTED]

No, we issued the statement independently last year. The White Ribbon Campaign is one of the listed links, but we can add a reference in the text. Is there something specific you wanted to add about the Department?

Thanks,
Ian

From: [REDACTED]

Sent: Friday, November 28, 2014 8:31 PM

To: McLeod, Ian W (COMMS)

Cc: [REDACTED]

Subject: RE: Message

Ian, given my realization that is a statement...I've made some edits below along with input requested in bracketed. Do we not usually submit jointly with Status of Women? I forget what we did last year...also, can we add something about the Department of Justice? Perhaps mention the white ribbon campaign?

-----Original Message-----

From: [REDACTED]

Sent: Friday, November 28, 2014 10:37 AM

To: McLeod, Ian W (COMMS)

Cc: [REDACTED]

Subject: Re: Message

I don't think it's necessary but either works.

----- Original Message -----

From: McLeod, Ian W (COMMS)

Sent: Friday, November 28, 2014 10:32 AM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Message

Thanks, [REDACTED] Just a quick thought - could we add a "to" before "prosper"?

Ian W. McLeod

Policy Communications | Communication des politiques Department of Justice Canada | Ministère de la Justice du
Canada iwmcleod@justice.gc.ca Telephone | Téléphone 613-617-8327 Facsimile | Télécopieur 613-954-0811
Government of Canada | Gouvernement du Canada

-----Original Message-----

s.19(1)

From: [REDACTED]
Sent: November-28-14 10:27 AM
To: McLeod, Ian W (COMMS)
Cc: [REDACTED]
Subject: Message

Ian, below is the final draft for the message--along w the links you had and the Minister's name at the end. Cheers, [REDACTED]

Statement by the Minister of Justice and Attorney General of Canada to Mark the National Day of Remembrance and
Action on Violence Against Women

On December 6, we commemorate the 25th anniversary of one of Canada's most tragic acts of violence and remember
its innocent victims. Fourteen women were murdered at the École Polytechnique de Montréal by a man who claimed to
be fighting feminism. These violent acts shocked and horrified Canadians, and echo to this day.

Our Government remains committed to addressing violence against women and girls. We have consistently taken action
to address gender-based violence in Canada, from participating in 16 Days of Activism Against Gender Violence, to our
newly released Action Plan to Address Family Violence and Violent Crimes Against Aboriginal Women and Girls. In
addition, Bill S-7 (reinsert name), recently introduced, is intended to protect against harmful practices such as early and
forced marriage, and ensure people who kill in the name of honour are held fully responsible for their actions. Our
Charter was passed over 30 years ago but our experience since then shows that constitutional guarantees are not
enough, there is so much more to do. Our laws, our culture, and our attitudes toward one another need constant
improvement if we are to realize the full potential of our society.

As we remember the 14 women killed at the École Polytechnique, we must work together to continue to build a country
where women and girls are safe, secure, free to pursue their ambitions, and prosper.

s.19(1)

Gauthier, Amy-Lyne

From: Assad, Michael
Sent: Wednesday, December 10, 2014 2:43 PM
To: [REDACTED] Nesbitt, Scott; * CLP SGC/Office; * SADMO/Admin;
Klineberg, Joanne; Hitch, Lisa; Blackell, Gillian; Lieff, Elissa
Cc: * CPAU Group
Subject: Bill S-7 - Carried without amendment

Good afternoon,

Please be advised that Bill S-7, the Zero Tolerance for Barbaric Cultural Practices Act, was carried without amendment at the Senate Human Rights Committee.

Thank you,

Michael Assad
Senior Analyst / Analyste principal
Cabinet and Parliamentary Affairs Unit / Unité des affaires du Cabinet et parlementaires

Ministerial Secretariat / Secrétariat ministériel
Justice Canada
284 Wellington, room / pièce 4256
Ottawa (Ontario) K1A 0H8

Tél. / Tel. : (613) 954-3232
BB: (613)797-2049
Téléc. / Fax : (613) 957-8382
michael.assad@justice.gc.ca

Assad, Michael

From: Blackell, Gillian
Sent: 2014-Dec-10 4:45 PM
To: Assad, Michael; [REDACTED] * CPAU Group; Lieff, Elissa; * CLP SGC/Office; * SADM/Adm; Hitch, Lisa; Klineberg, Joanne; Lafleur, Eric
Subject: RE: Committee Summary of the Senate Standing Committee on Human Rights (clause-by-clause consideration) Study of Bill S-7 (Zero Tolerance for Barbaric Cultural Practices Act)
Attachments: RIDR Committee Report 10Dec14 (JUS).docx

Thanks Michael,
Just one small correction - it's the *Youth Criminal Justice Act*, not the *Young Offenders Act*, which was repealed in 2002. I have attached a revised version.

Cheers,
Gillian

Gillian Blackell, B.A., LL.B., LL.M.
Senior Legal Counsel / Avocate-conseil
Family, Children and Youth Section / Section de la famille, des enfants et des adolescents
Department of Justice Canada / Ministère de la Justice Canada
Tel. / tél. : (613) 954-1444
Fax / télécopieur : (613) 952-5740
E-mail / courriel : gillian.blackell@justice.gc.ca

s.19(1)

This message and its attachments may contain information that is protected and exempt from disclosure under applicable law.
/ Cette communication peut contenir de l'information protégée et ne pouvant être divulguée selon la loi applicable en l'espèce.

From: Assad, Michael
Sent: 2014 Dec 10 4:42 PM
To: [REDACTED] * CPAU Group; Lieff, Elissa; * CLP SGC/Office; * SADM/Adm; Blackell, Gillian; Hitch, Lisa; Klineberg, Joanne; Lafleur, Eric
Subject: Committee Summary of the Senate Standing Committee on Human Rights (clause-by-clause consideration) Study of Bill S-7 (Zero Tolerance for Barbaric Cultural Practices Act)

Good afternoon,

Please find attached CIC's summary report of the Senate Human Rights Committee hearing on Bill S-7.

Thank you,

Michael Assad
Senior Analyst / Analyste principal
Cabinet and Parliamentary Affairs Unit / Unité des affaires du Cabinet et parlementaires

Ministerial Secretariat / Secrétariat ministériel
Justice Canada
284 Wellington, room / pièce 4256
Ottawa (Ontario) K1A 0H8

Tél. / Tel. : (613) 954-3232
BB: (613)797-2049
Téléc. / Fax : (613) 957-8382
michael.assad@justice.gc.ca

Assad, Michael

From: May.Sara <Sara.May@cic.gc.ca>
Sent: 2014-Dec-11 10:47 AM
To: NHQ-Comm-Tactics; 'pai@pco.gc.ca'; Galadza.Larisa; Tsai.Maureen; Clarke.Karen; Blackell, Gillian; Klineberg, Joanne; Hitch, Lisa
Cc: Assad, Michael; 'Michael.Berg@international.gc.ca'; 'Marc.Labrom@international.gc.ca'; 'Heather.Cudmore@international.gc.ca'; Laing.Johanna; CIC-CorpSec-PAU; Oliviero.Marco; Savard.Fanny; Hetherington.Erin
Subject: RE: Committee Summary of the Senate Standing Committee on Human Rights (clause-by-clause consideration) Study of Bill S-7 (Zero Tolerance for Barbaric Cultural Practices Act)
Attachments: 51830HumanRights20141210 (2).docx

Good morning,

Further to my email of yesterday, please find attached the unedited transcripts of yesterday's meeting.

Also, I wish to make a correction to yesterday's report summary – the report referenced the *Young Offenders Act*, when it should have in fact referenced the *Youth Criminal Justice Act*.

Thank you.

Sara May
NHQ - Departmental Secretariat | AC - Secrétariat ministériel
Citizenship and Immigration Canada | Citoyenneté et Immigration Canada
365 Laurier Avenue West Ottawa ON K1A 1L1 | 365, avenue Laurier Ouest Ottawa ON K1A 1L1
Sara.May@cic.gc.ca
Telephone | Téléphone 613-437-9113
Government of Canada | Gouvernement du Canada

From: May.Sara
Sent: December 10, 2014 4:14 PM
To: NHQ-Comm-Tactics; 'pai@pco.gc.ca'; Galadza.Larisa; Tsai.Maureen; Clarke.Karen; 'Blackell, Gillian'; 'Klineberg, Joanne'; 'Hitch, Lisa'
Cc: 'Assad, Michael'; 'Michael.Berg@international.gc.ca'; 'Marc.Labrom@international.gc.ca'; 'Heather.Cudmore@international.gc.ca'; Laing.Johanna; CIC-CorpSec-PAU; Oliviero.Marco; Savard.Fanny; Hetherington.Erin
Subject: Committee Summary of the Senate Standing Committee on Human Rights (clause-by-clause consideration) Study of Bill S-7 (Zero Tolerance for Barbaric Cultural Practices Act)

Good afternoon,

This afternoon, the Senate Standing Committee on Human Rights met to undertake clause-by-clause consideration of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*).

Three amendments were presented by Liberal Senators; Senator Jaffer presented amendments to change the national age of marriage from 16 to 18, and to delete clause 7 of the Bill relating to provocation. Senator Eggleton moved an amendment to remove the short title from the Bill. All amendments were defeated. All clauses were carried on division, and the Bill was passed by a vote of 6-3.

Officials were present during clause-by-clause; the committee asked Department of Justice officials questions relating to criminal liability for children/young adults involved in early and/or forced marriage. Officials responded that although criminal liability begins at age 12, between the age of 12-18 years of age, they would fall under the prevue of the *Young Offenders Act*, but that it would be highly unlikely that children/young adults would be prosecuted under the law, with

the exception of a sibling who is actively acting with his/her parents to coerce the victim into an early and/or forced marriage.

Please find attached a copy of the committee report.

CIC Parliamentary Affairs will circulate the committee transcript once it becomes available.

Next Steps: The Bill will be referred back to the Senate at a date to be determined.

Thank you.

Sara May
NHQ - Departmental Secretariat | AC - Secrétariat ministériel
Citizenship and Immigration Canada | Citoyenneté et Immigration Canada
365 Laurier Avenue West Ottawa ON K1A 1L1 | 365, avenue Laurier Ouest Ottawa ON K1A 1L1
Sara.May@cic.gc.ca
Telephone | Téléphone 613-437-9113
Government of Canada | Gouvernement du Canada

Assad, Michael

From: May.Sara <Sara.May@cic.gc.ca>
Sent: 2014-Dec-11 10:48 AM
To: Blackell, Gillian; Klineberg, Joanne; Hitch, Lisa
Cc: Assad, Michael
Subject: RE: Committee Summary of the Senate Standing Committee on Human Rights (clause-by-clause consideration) Study of Bill S-7 (Zero Tolerance for Barbaric Cultural Practices Act)

Thanks for clarifying, Gillian. Apologies for the oversight.

Sara May
NHQ - Departmental Secretariat | AC - Secrétariat ministériel
Citizenship and Immigration Canada | Citoyenneté et Immigration Canada
365 Laurier Avenue West Ottawa ON K1A 1L1 | 365, avenue Laurier Ouest Ottawa ON K1A 1L1
Sara.May@cic.gc.ca
Telephone | Téléphone 613-437-9113
Government of Canada | Gouvernement du Canada

From: Blackell, Gillian [mailto:Gillian.Blackell@justice.gc.ca]
Sent: December 10, 2014 4:31 PM
To: May.Sara; Klineberg, Joanne; Hitch, Lisa
Cc: Assad, Michael
Subject: RE: Committee Summary of the Senate Standing Committee on Human Rights (clause-by-clause consideration) Study of Bill S-7 (Zero Tolerance for Barbaric Cultural Practices Act)

Thanks Sara,
Just one small correction - it's the *Youth Criminal Justice Act*, not the *Young Offenders Act*, which was repealed in 2002.
Cheers,
Gillian

From: May.Sara [mailto:Sara.May@cic.gc.ca]
Sent: 2014 Dec 10 4:14 PM
To: NHQ-Comm-Tactics; 'pai@pco.gc.ca'; Galadza.Larisa; Tsai.Maureen; Clarke.Karen; Blackell, Gillian; Klineberg, Joanne; Hitch, Lisa
Cc: Assad, Michael; 'Michael.Berg@international.gc.ca'; 'Marc.Labrom@international.gc.ca'; 'Heather.Cudmore@international.gc.ca'; Laing.Johanna; CIC-CorpSec-PAU; Oliviero.Marco; Savard.Fanny; Hetherington.Erin
Subject: Committee Summary of the Senate Standing Committee on Human Rights (clause-by-clause consideration) Study of Bill S-7 (Zero Tolerance for Barbaric Cultural Practices Act)

Good afternoon,

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Three amendments were presented by Liberal Senators; Senator Jaffer presented amendments to change the national age of marriage from 16 to 18, and to delete clause 7 of the Bill relating to provocation. Senator Eggleton moved an amendment to remove the short title from the Bill. All amendments were defeated. All clauses were carried on division, and the Bill was passed by a vote of 6-3.

Officials were present during clause-by-clause; the committee asked Department of Justice officials questions relating to criminal liability for children/young adults involved in early and/or forced marriage. Officials responded that although criminal liability begins at age 12, between the age of 12-18 years of age, they would fall under the prevue of the *Young Offenders Act*, but that it would be highly unlikely that children/young adults would be prosecuted under the law, with

Gauthier, Amy-Lyne

From: Assad, Michael
Sent: Monday, December 15, 2014 10:10 AM **s.19(1)**
To: [REDACTED] Lafleur, Eric
Cc: * CPAU Group
Subject: Bill S-7 (ZTBCP) - Speeches
Attachments: Speech 3 - EFM in Canada JUS_DMO approved.docx; Speech 1 - General overview JUS_DMO approved.docx; Speech 2 Canada's leadership JUS_DMO approved.docx

Good morning,

You will find attached three speeches that have been prepared subsequent to an informal request from CIC. They have been approved by DMO.

Please let me know when these are approved for sharing with CIC.

Thank you,

Michael Assad
Senior Analyst / Analyste principal
Cabinet and Parliamentary Affairs Unit / Unité des affaires du Cabinet et parlementaires

Ministerial Secretariat / Secrétariat ministériel
Justice Canada
284 Wellington, room / pièce 4256
Ottawa (Ontario) K1A 0H8

Tél. / Tel. : (613) 954-3232
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michael.assad@justice.gc.ca

Justice - Speech #1

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

General overview

Length: words 1,878

Time: 15 minutes

DRAFT

**Speaking Notes
for the**

Honourable XXX

For XXX

***Bill S-7: Zero Tolerance for Barbaric Cultural Practices
Act***

Ottawa, ON

December 2014

Check against delivery

SECRET

General Overview of *Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act*

Mr. Speaker, I am pleased to have the opportunity today to speak on Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*. In the Speech from the Throne in October 2013, our Government promised that it would ensure that early and forced marriage and other harmful cultural practices, such as polygamous marriages and so-called “honour”-based violence, do not occur on Canadian soil.

Bill S-7 delivers on that promise. These harmful practices typically affect women and girls and violate basic human rights. They are unequivocally unacceptable in Canadian society. Our Government is taking action in strengthening the laws in Canada to prevent and respond to such practices.

SECRET

This Bill will do many things to address early and forced marriage and other related harmful cultural practices. It will establish in the *Civil Marriage Act* a national minimum age of 16 for marriage. This is to protect our most vulnerable in society – our children - from early marriages.

The minimum age of 16 for marriage currently exists in federal legislation pertaining to Quebec, but has never been legislated for the rest of Canada. As a result, the common law applies, which is usually interpreted as a minimum age of 14 for boys and 12 for girls, but could be as low as 7. This Bill would now set 16 as the minimum age for marriage across Canada.

The *Civil Marriage Act* will also be amended to codify the legal requirement for free and enlightened consent to marriage. This is currently legislated in federal law for

SECRET

Quebec and is well established in the common law for the rest of the country. A forced marriage occurs where one or both spouses do not consent to the marriage. Consent is truly the most critical aspect of a lawful marriage. This amendment makes it clear that no Canadian should ever be forced to marry against their will and complements certain amendments to the *Criminal Code* which I will discuss shortly.

Amendments to the *Civil Marriage Act* will also codify the existing requirement that all previous marriages be dissolved prior to entering another marriage. This requirement exists in federal law applicable to Quebec and in the common law elsewhere. This approach is consistent with section 2 of the *Civil Marriage Act* and the longstanding *Criminal Code* prohibition against bigamous and polygamous marriages.

SECRET

Also in relation to polygamy, this Bill proposes amendments to the *Immigration and Refugee Protection Act* to specify that a permanent resident or foreign national is inadmissible on the grounds of practising polygamy in Canada. Under the current immigration law, non-citizens can only be removed in cases where there is a criminal conviction for practising polygamy, or where there is a finding of misrepresentation because they lied about the number of spouses the individual had at the time of their application. To increase our ability to prevent polygamy from occurring on Canadian soil, this Bill would prohibit both temporary and permanent residents from practising polygamy in Canada and provide for the removal of non-citizens who practise polygamy in Canada without the need for a *Criminal Code* conviction.

Coming back to the issues of early and forced marriage, this Bill proposes several amendments to the *Criminal Code* to

SECRET

better prevent Canadians from being victimized in these ways.

There are currently a range of *Criminal Code* provisions which may be relevant in forced marriage cases. For instance, in trying to cause a child to marry, parents might threaten, assault, or forcibly confine them. These are already offences, regardless of the motive. The proposed amendments in this Bill fill a legislative gap by creating offences which focus on the active participation in the forced or underage marriage ceremony itself.

The Bill proposes two new offences that would extend criminal liability to anyone who knowingly celebrates, aids or participates in a marriage ceremony where one or both of the spouses is either under the age of 16 or is marrying against their will. This would cover both those who conduct the marriage ceremony, and those, such as family members,

SECRET

who have full knowledge that a marriage is forced or involves a child under 16 and actively participate in the marriage ceremony such as transporting an unwilling bride to the ceremony or acting as a legal witness. However, it is also clear that a person cannot be prosecuted for merely being at the scene of a crime and witnessing it – to be prosecuted for this offence, a person would need to have engaged in some conduct specifically directed toward helping an early or forced marriage to occur.

The proposed offences address the social harm caused by the public sanctioning of these harmful practices. A forced marriage creates an unwanted legal bond that is difficult to break and within which sexual assault and other forms of violence are expected to occur. Studies have indicated that the vast majority of victims of a forced marriage are subjected to violence within that marriage.

SECRET

**Similarly, girls who marry early are at far greater risk of:
experiencing complications in pregnancy and childbirth,
including higher maternal mortality rates; experiencing
violence in the home; and having their education disrupted.
Underage marriage violates girls' basic human rights and
prevents them from fully participating in society.**

**These two new offences would be punishable by a maximum
of five years imprisonment.**

**The Bill also proposes to make it an offence to remove a
child from Canada for the purposes of a forced or underage
marriage outside of Canada. This Government is aware of
disturbing cases of Canadian children being taken abroad for
a forced or early marriage. Child protection officials who
believe that a child will be removed from Canada for a forced
or underage marriage currently lack the requisite legal tools**

SECRET

to intervene and prevent the child's removal from Canada.

This Bill will change that.

There is currently a provision in the *Criminal Code* that makes it a crime to take steps to remove a child ordinarily resident in Canada from the country with the intent that the child be subject to one of the listed offences. The offence is punishable by a maximum of five years imprisonment. This Bill would add the new offences related to an underage or forced marriage ceremony to the list of offences in the provision that makes it a crime to remove a child from Canada. I am confident that these proposed amendments will help prevent and deter the removal of children for such harmful practices, and effectively punish those perpetrators who violate the law.

Moreover, this Bill has other strong prevention measures to protect vulnerable Canadians and residents from early and

SECRET

forced marriages. The Bill proposes to introduce specific forced or underage marriage peace bonds. Peace bonds currently exist in the *Criminal Code* and are preventative court orders available in circumstances where a person fears on reasonable grounds that another person will cause them personal injury or will commit certain types of offences. The new forced or underage marriage peace bonds would be appropriately tailored to allow potential victims to seek protection against a pending forced or underage marriage. An order under the new peace bond provision could specifically:

- prohibit the person subject to the order from making arrangements or agreements for the forced or underage marriage of the victim;
- require the person subject to the order to surrender passports in their possession;
- prohibit them from leaving the country or taking a child out of the country; and

SECRET

- **require them to participate in a family violence counselling program.**

We have heard that many victims of forced marriages are reluctant to contact the authorities prior to the marriage because they do not want their parents or other relatives prosecuted. Some victims have expressed the view that their parents are under the misguided belief that the marriage is in their child's best interest. These peace bonds offer victims an alternative to prevent the forced marriage without a prosecution or conviction of their family members. An individual subject to a peace bond is not charged with a criminal offence unless they either refuse to enter the peace bond or they breach it. These peace bonds also reinforce the clear message that forced and underage marriage will not be tolerated in Canada.

SECRET

Finally, in the area of violence motivated by so-called “honour”, it bears repeating that all forms of violence, whatever the motive, are fully prohibited by the criminal law. There is no need to create specific offences for “honour”-based violence.

This Bill would, however, amend the *Criminal Code* to limit the defence of provocation to ensure that it is never an excuse for murder that the victim did something lawful that led another person to feel so enraged and insulted that they killed.

The defence of provocation can currently be raised by a person who is found to have committed murder where they claim that they did so in the heat of passion in response to a “wrongful act or insult” by the victim that caused them to lose their self-control. If successful, even though the person is found to have committed murder, they are instead

SECRET

convicted of manslaughter, which has no mandatory minimum sentence unless a firearm is used. By contrast, a conviction for murder carries a mandatory minimum sentence of life imprisonment and a minimum of 10 years incarceration before being eligible for parole.

The defence of provocation has been raised in several so-called "honour" killing cases in Canada, on the basis that the victim's behaviour – such as choosing one's own marriage partner or making other such personal decisions for oneself without a family or a husband's approval – amounted to a "wrongful act or insult" that, when considered in the context of the cultural community to which they belonged, provoked the accused to kill due to a sense of damaged "honour" or reputation. To date, the defence has not been successful in so-called "honour" killings in Canada, however, the defence remains available to be raised in similar cases in the future.

SECRET

The defence has been successfully invoked in spousal homicides of women in response to the legal conduct of the victim, including where the victim was simply trying to end the relationship or had said something that the killer found insulting, as well as in cases of real or perceived infidelity.

It is simply not appropriate to excuse murder because the killer was insulted, embarrassed or suffered other emotional upset. It is certainly not appropriate to excuse murder because a person was unable to control the actions and decisions of another person. In Canada, we are all equal, and we are all entitled to make our own choices. No one deserves to be killed because their choices are unwelcome to their spouse, their parents, or anyone else. Accordingly, this Bill proposes to restrict the application of the defence of provocation so that it is no longer available to those who intentionally kill another person in response to conduct that

SECRET

was legal. It will only be available where the victim's conduct amounted to a relatively serious criminal offence.

I hope that all Members of this House will join me in supporting Bill S-7, which signals to all in Canadian society - and the world - that Canada will not tolerate early and forced marriage and other harmful practices taking place in our country.

Thank you.

Justice - Speech #2

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

Canada's Leadership – Domestic and International Considerations

Length: words 1,688

Time: 12 minutes

Speaking Notes

for the

Honourable XXX

For XXX

***Bill S-7: Zero Tolerance for Barbaric Cultural Practices
Act***

Ottawa, ON

December 2014

Check against delivery

SECRET

Canada's Leadership – Domestic and International Considerations

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

**I am pleased to have the opportunity today to speak on
Bill S-7, regarding Canada's commitment to preventing and
responding to early and forced marriage and other barbaric
cultural practices, both at home and abroad.**

**I am proud to say that Canada has made ending child, early
and forced marriage an international development and
foreign policy priority. For example, in October 2013, Canada
announced \$5 million in new money to address the causes
and consequences of early and forced marriage around the
world. These funds were used for programs in Afghanistan,
Ethiopia, Ghana, Somalia, and Zimbabwe.**

SECRET

More recently, in July 2014, the Minister of Foreign Affairs announced that Canada is contributing \$20 million over two years to UNICEF toward ending child, early and forced marriage. The UNICEF project aims to accelerate the movement to end child marriage in Bangladesh, Burkina Faso, Ethiopia, Ghana, Yemen and Zambia by supporting efforts in these countries to strengthen both programming and political support to end the practice.

Canada has also played an important role in bringing world attention and action to this issue of child, early and forced marriage through actions such as spearheading the initiative to establish the International Day of the Girl Child and co-leading with Zambia a United General Assembly resolution on child, early and forced marriage.

Similarly, Canada contributes to efforts to combat female genital mutilation (FGM) by working with UN agencies, and

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bilaterally with other countries supporting projects to address violence against women and eliminate harmful cultural practices like FGM.

These barbaric practices predominantly affect women and girls and impair their rights and ability to fully participate in society. Equality of men and women under the law is a fundamental Canadian value that shapes Canadian policy and actions both in the international and the domestic arenas.

Free and healthy societies require the full participation of women. Sadly, in many countries around the world, millions of women and girls continue to be prevented from full participation by violence, including through the inhumane practices of early and forced marriage. It is both the reality and the strength of our country that Canadians of very different origins live and work side by side, together. New

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Canadians work hard to learn our languages, our values, and our traditions, and in turn, are welcomed as equal members of the Canadian family. The languages, cultures and traditions of new Canadians add to the diversity of Canada which enriches our lives. At the same time, harmful cultural practices which go against Canadian values, and are in violation of Canada's international human rights commitments, will not be tolerated in Canada.

This Government is aware of cases of Canadian children being taken abroad for an early or forced marriage and has concerns that girls who are from countries where the practice of female genital mutilation is common, may be at risk. Canada is committed to protecting and defending those who are vulnerable to these practices, both domestically and internationally.

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This Government has demonstrated its leadership in this area by introducing this Bill, and also by continuing to work with our international partners and community members to find ways to end such harmful practices which tragically are happening each and every day around the world.

Bill S-7 will introduce a national minimum age of marriage of 16, below which no marriage may be contracted under any circumstances. It expands current federal law regarding a minimum age of 16 to marry in Quebec to now apply across the country. Setting the minimum age to marry across Canada at 16 is consistent with current practices in like-minded countries, such as the United Kingdom, Australia, and New Zealand.

Provincial and territorial legislation will still impose requirements for marriages between the ages of 16 and 18 or 19 (depending on the age of majority in the province or

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territory). Requirements such as parental consent or a court order provide added safeguards to permit mature minors between the ages of 16 and 18 to marry in exceptional circumstances. However, given that many forced marriages are perpetrated by parents, parental consent to the marriage of a minor may be insufficient to protect against forced marriage where it is the parents who are forcing the marriage upon an unwilling child. As a result, the Minister of Justice has engaged his provincial and territorial counterparts in a discussion with respect to enhancing legislative measures which fall within their constitutional jurisdiction to protect against forced marriages by requiring judicial consent in all marriages involving a minor.

Some may query why this Bill has not raised the minimum age to marry to 18. The approach in this Bill seeks to balance protections for children against flexibility to reflect the choices of mature minors between the ages of 16 and 18 who

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make a commitment to one another, such as those who have a child together. It also aligns with the approaches taken in other like-minded countries, as I have previously mentioned.

Bill S-7 also proposes to amend the *Criminal Code* to create the offences of knowingly celebrating, aiding or actively participating in a marriage ceremony involving a person under the age of 16 or a forced marriage. The new offences of actively participating in a forced or underage marriage ceremony specifically address the social harm caused by the public endorsement of an unwanted or harmful legal bond, within which sexual violence is expected to occur.

These offences will apply to individuals who engage in conduct specifically intended to facilitate the marriage ceremony – such as acting as a legal witness – knowing that one of the parties is under the age of 16 or marrying against

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their will. These proposed new offences would be punishable by a maximum of five years imprisonment.

The proposed amendments will also criminalize taking steps to remove a child from Canada for the purpose of an underage or forced marriage. This is done by adding the new offences in relation to underage and forced marriage to the existing offence of removing a child from Canada to commit female genital mutilation or sexual offences. This offence is punishable by a maximum of five years imprisonment and Bill S-7 maintains this penalty. Countries such as Australia and Norway have similar criminal measures which Canada has looked to in the development of this Bill.

This Bill will also create a new peace bond that can be ordered by a court where there are reasonable grounds to believe that a person will participate in an early or forced marriage ceremony, or will take a child out of Canada with

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the intent that they be subjected to an early or forced marriage ceremony abroad. As part of the conditions that would be available, a court could order a defendant to avoid making any plans or arrangements for a marriage, whether inside or outside Canada, to surrender travel documents, or to participate in a family violence counselling program. The creation of specific forced or underage marriage peace bonds to prevent someone from being taken abroad for the purposes of early or forced marriage are similar to forced marriage civil protection orders in the United Kingdom.

In addition, the Bill proposes to amend the *Criminal Code* to address concerns that, although unsuccessful to date, the defence of provocation has been raised in several so-called “honour” killing cases in Canada. The defence of provocation currently allows a person found to have committed murder (which carries a mandatory sentence of life in prison) to seek a conviction of manslaughter instead

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(with no minimum sentence unless a firearm is used) by arguing that the victim's conduct provoked them to lose self-control and kill.

Currently, any conduct by the victim – including insults and other forms of offensive behaviour that are lawful – can potentially qualify as provocation if it is found to be sufficient to cause an ordinary person to lose self-control, the accused was not expecting it and the killing was sudden.

The proposed amendment would limit the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family “honour” or reputation, cannot excuse murder; only conduct by the victim that amounts to a relatively serious criminal offence (i.e. an offence under the *Criminal Code* punishable by at least 5

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years in prison) could be argued to be “provocation” for the purposes of the defence.

The provocation defence has either been abolished or restricted in almost every common law jurisdiction like Canada, such as most Australian states, New Zealand and the United Kingdom.

Finally, this Bill proposes amendments to the *Immigration and Refugee Protection Act* (IRPA) to increase the Government of Canada’s ability to prevent polygamy from occurring in Canada. While current IRPA provisions require foreign nationals wishing to become permanent residents to have only one spouse, once in Canada it is difficult to find these individuals inadmissible. A criminal conviction or finding of misrepresentation is currently required before polygamists can be found inadmissible. This Bill would make amendments to the IRPA so that a polygamist permanent

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resident or foreign national who is or will be physically present in Canada with any of their spouses would be considered to be practising polygamy in Canada. The permanent resident or foreign national could be found inadmissible *on that basis alone*, without requiring evidence that the person misrepresented their situation or has a criminal conviction.

I have discussed some of the very important aspects of this Bill, to highlight that Canada is taking concrete action in ensuring that early and forced marriage, and similar harmful cultural practices, do not occur on Canadian soil, as promised in the October 2013 Speech from the Throne. This Bill also sends a strong message that Canada condemns such practices, not only domestically but internationally as well. Canada has and will continue to be seen as an international leader on these important human rights issues.

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I hope that the Government will get the support of all Honourable Members in protecting victims, predominately women and girls, from such intolerable and inhumane practices.

Thank you.

Justice - Speech #3

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

Early and Forced Marriage in Canada

Length: words 1,574

Time: 12 minutes

**Speaking Notes
for the**

Honourable XXX

For XXX

***Bill S-7: Zero Tolerance for Barbaric Cultural Practices
Act***

Ottawa, ON

December 2014

Check against delivery

SECRET

Early and Forced Marriage in Canada

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

I am very pleased to rise today and speak about **Bill S-7: the *Zero Tolerance for Barbaric Cultural Practices Act***. Among other things, this Bill strongly condemns underage and forced marriage, which are deplorable human rights violations, that are regrettably taking place with Canadians, and may even be taking place on Canadian soil.

A forced marriage is one in which at least one of the two spouses is entering the marriage without his or her free and enlightened consent. There is a clear distinction between forced and arranged marriages. In an arranged marriage, both spouses consent to the marriage.

It is difficult to quantify the numbers of forced marriages involving Canadians that are taking place abroad, or even

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whether there are any forced marriages taking place on our soil, but studies have revealed that forced marriages involving Canadians do indeed take place .

In August 2013, the South Asian Legal Clinic of Ontario published a report that found that front-line service providers in Ontario had encountered 219 instances involving persons in forced marriages, between 2010 and 2012. In 92% of the cases, the victim of the forced marriage was a female and in 30% of these cases the victim was under the age of 18. All of the individuals forced into marriage experienced violence.

A study conducted for Justice Canada that was based on interviews with service providers from Montréal and Toronto in 2008, also confirmed that there were Canadians who had been subjected to forced marriage and concluded that "it is the government's duty to address the problem of forced

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marriage and to protect those who are threatened with it or are already its victims.”

Another study for Justice Canada conducted in Edmonton, Calgary and Vancouver in 2010, concluded that “based upon the estimate from service providers who are dealing with the incidence of forced marriage in Western Canada, our conclusion is that forced marriage is *not sporadic* in Western Canada ... half of the respondents said it is ‘widespread’ or ‘common’ or ‘becoming common’.”

The victims of this deplorable practice are most often young women, and occasionally men, who are being forced, usually by their own parents or other family members, to marry someone they are unwilling to marry. These young people are sometimes even made to abandon their education for the purposes of being married against their will. Some victims are told that they are going overseas to a relative’s wedding,

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only to discover upon arrival that the wedding ceremony is, in fact, their own.

Indeed, Canadian consular affairs has received over one hundred requests for consular assistance from Canadians abroad related to forced marriages since 2009.

Marriage is an important societal pillar and creates significant legal consequences. Anyone entering into a marriage should do so with clear forethought and utmost willingness. Any attempts to force someone into a marriage go against Canadian human rights and values and indeed, against international human rights standards.

The same applies to early or underage marriage.

International studies show that girls who marry early are at far greater risk of: experiencing complications in pregnancy and childbirth, including higher maternal mortality rates;

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experiencing violence in the home; and having their education disrupted. It is clear that underage marriage violates girls' basic human rights and prevents them from fully participating in society.

There is currently no national minimum age below which no marriage may be legally contracted in Canada. Federal legislation applicable only in Quebec, sets the minimum age at 16. Elsewhere in Canada, the common law is unclear but appears to set the minimum age at 14 for boys, 12 for girls, and sometimes as low as 7.

Bill S-7 will introduce a national minimum age for marriage of 16, below which no marriage may be contracted under any circumstances. Setting the minimum age to marry across Canada at 16 is consistent with current practices in like-minded countries, such as the United Kingdom, Australia, and New Zealand.

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Provincial and territorial legislation will still impose requirements for marriages between the ages of 16 and 18 or 19 (depending on the age of majority in the province or territory). Requirements such as parental consent or a court order provide added safeguards to permit mature minors between the ages of 16 and 18 to marry in exceptional circumstances, such as where they have a child together and wish to marry.

However, parental consent to the marriage of a minor may not be sufficient to protect against forced marriage, because it is typically the parents who are forcing the marriage upon an unwilling child. As a result, the Minister of Justice has engaged his provincial and territorial counterparts in a discussion with respect to enhancing legislative measures which fall within their constitutional jurisdiction to protect

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against forced marriages by requiring judicial consent in all marriages involving a minor.

We have seen tragic consequences for young people who refuse a forced marriage. Some run away and go into hiding. Some are beaten or even murdered, because of a misguided belief that their refusal to enter or continue in a forced marriage has tarnished the family "honour".

On January 2, 2010, a young woman was brutally beaten by her uncle and her three cousins in Calgary because she refused to marry a man her uncle had chosen for her. They were convicted of assault causing bodily harm in 2013.

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On April 17, 2009, a 19 year old woman fled her home in Montréal, terrified because her parents were going to force her to marry a man she didn't want to marry.

A few months later, on June 30th, that same woman, her two younger sisters and her father's first wife in a polygamous marriage, were brought together on the pretext of a family vacation. Their bodies were found in a car submerged in the Kingston locks. The barbaric "honour" killings of the young Shafia sisters and their step-mother came as a shock to the whole country. These brutal murders horrified Canadians and prompted many questions about how they could have been prevented.

Preventing such tragedies from occurring again is the primary objective of this laudable Bill. It contains tools to protect potential victims from an impending forced or underage marriage in the form of specific peace bonds.

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These can be ordered by a court where there are reasonable grounds to believe that a person will participate in an early or forced marriage ceremony, or will take a child out of Canada with the intent that they be subjected to an early or forced marriage ceremony abroad. Under these peace bonds, a court could order a defendant to avoid making any plans or arrangements for a marriage (whether inside or outside Canada); to surrender travel documents; and to participate in a family violence counselling program.

The Bill also proposes to criminalize taking steps to remove a child from Canada for the purposes of a forced or underage marriage. This will be done by expanding the current provision in the *Criminal Code* which prohibits removing a child from Canada to commit female genital mutilation and sexual offences, in order to also criminalize taking steps to remove a child from Canada for the purposes of forced marriages and marriages under the age of 16.

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These proposed amendments are designed to empower victims by giving them tools to prevent underage or forced marriages and by permitting them to clearly articulate to their family members or relatives forcing them to marry that this conduct is unacceptable in Canada and constitutes a crime.

These critical preventative measures would not be possible without the proposed inclusion of two new offences in the *Criminal Code* of knowingly celebrating, aiding or actively participating in a marriage ceremony involving a person who is marrying against their will or is under the age of 16. These two new offences serve as building blocks for the preventative measures that I just mentioned. They also serve to directly denounce behaviour that provides social legitimacy to the imposition of an unwanted or harmful legal bond that is difficult to sever and within which sexual assaults are expected to occur.

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These new offences would apply where a marriage celebrant knows that one of the people they are marrying does not consent to the marriage or is underage, regardless of whether the celebrant is legally authorized to officiate the marriage or not. The offences would also apply where a person, such as a parent or other family member, knowingly and willingly takes certain actions to help ensure that the forced or underage marriage takes place, such as being a signatory witnesses or transporting the person being married to the ceremony.

These offences would not criminalize mere guests in the wedding ceremony who otherwise do not actively try to assist the marriage to take place. Most importantly, these offences in no way subject the person who is forced to marry or who marries while underage to criminal liability. They are the victims of these harmful practices.

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A person found guilty of these new offences could face up to five years imprisonment. This is comparable to like-minded countries with specific offences related to forced marriages.

I fully agree with the intentions of this Bill, and I sincerely hope that the Government will get the support of all Honourable Members so that people from all communities within Canada, have equal opportunities and the same right to choose whether to marry, when to marry and who they marry.

Thank you.

Gauthier, Amy-Lyne

From: Assad, Michael
Sent: Tuesday, December 16, 2014 10:00 AM
To: [REDACTED] Lafleur, Eric
Cc: * CPAU Group
Subject: Bill S-7 - Revised PT Response Chart
Attachments: SECOND REVISED Marriage - PT Responses to letter from Minister of Justice Canada.docx

Good morning,

Please find attached the revised chart of PT responses with respect to Bill S-7.

s.19(1)

Thank you,

Michael Assad
Senior Analyst / Analyste principal
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s.13(1)(c)

s.14

**Responses to letter from Minister of Justice Canada (Sept. 9, 2014) encouraging PTs to
amend their marriage acts to require judicial consent for marriages between age 16 and
age of majority**

Province/territory	Date of response	Position



Page 691

**is withheld pursuant to sections
est retenue en vertu des articles**

13(1)(c), 14

**of the Access to Information Act
de la Loi sur l'accès à l'information**

Gauthier, Amy-Lyne

From: Assad, Michael
Sent: Thursday, December 18, 2014 4:12 PM
To: [REDACTED] Lafleur, Eric
Cc: * CPAU Group
Subject: Bill S-7 (ZTBCP) - Analysis of UNICEF brief
Attachments: Response to UNICEF December 17, 2014.docx

s.19(1)

Good afternoon,

Please find attached the requested analysis of the UNICEF brief.

Thank you,

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Senior Analyst / Analyste principal
Cabinet and Parliamentary Affairs Unit / Unité des affaires du Cabinet et parlementaires

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Protected "B"

Department of Justice Canada
Response to recommendations from UNICEF Canada on Bill S-7

Recommendation 1:

That children and young people be exempt from the measures set out in the proposed new sections 293.1 and 293.2 to the *Criminal Code*, and the proposed amendments to subsection 14(2) of the *Youth Criminal Justice Act*.

Response:

Youth under the age of 18 are subject to a separate regime in relation to charging, criminal procedure, sentencing, rehabilitation and reintegration that takes into consideration their vulnerability: The age of criminal responsibility in Canada is 12 (section 13 *Criminal Code*) and unless an express rule applies, anyone over that age is subject to the criminal law. However, youth aged 12 to 17 who are accused of a criminal offence are subject to distinct legal principles, protections and outcomes pursuant to the *Youth Criminal Justice Act* (YCJA). The YCJA provides that the youth criminal justice system must be separate from the adult system, and it is based on the principle that youth are presumed to be less morally blameworthy than adults. The law recognizes that youth must be held accountable, but in a way that takes into account their greater dependency and reduced level of maturity.

It is important to note that the YCJA requires police officers to consider using alternatives to charging or "extrajudicial measures" in all cases of youth offending. Under the Act, extrajudicial measures are presumed to be adequate to hold young persons accountable in circumstances where it is a first-time, non-violent offence.

While the proposed offences are designed to protect children and vulnerable persons from harm, there is a possibility that they may be committed by youth. Studies on forced marriage indicate that multiple family members can take part in the use of force for the purpose of compelling a person to marry against their will. Siblings may be tasked by their parents with the job of enforcing or assisting with the enforcement of the marriage. Excluding youth from the ambit of these offences might result in parents' increased reliance on their minor children to force another child into an unwanted marriage, and may fail to hold accountable individuals whose conduct is blameworthy and which directly contributes to the victimization of another.

Proposed offence of participation in a forced marriage ceremony

A young person merely attending the wedding ceremony would not be captured by the offence even if they knew the marriage was forced. With respect to the proposed offence of participation in a forced marriage ceremony, every person who aids or participates in a ceremony knowing that a person being married does not consent could be subject to prosecution. However, mere passive presence or attendance at such a marriage would not be culpable, based on existing jurisprudence applicable to these concepts in other contexts (specifically, the context of party liability provisions under section 21 of the *Criminal Code*). Some deliberate, active conduct would be required that is aimed at facilitating the ceremony, such as being an official witness or transporting an unwilling person to the ceremony.

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Charging and prosecuting

A young person subject to a forced marriage is the victim of the crime, and therefore would not be prosecuted. If the victim is below the age for child protection within their jurisdiction, child protection authorities would also be contacted.

As for a young person who knowingly and actively participates or aids the forced marriage ceremony of another person, they could be charged with the proposed offence. However, as noted above, the *Youth Criminal Justice Act* requires police officers to consider using alternatives to charging or "extrajudicial measures" in all cases of youth offending. If extrajudicial measures are deemed to be inappropriate, charges may be laid. Whether charges proceed to trial will be based on the prosecutor's assessment of the public interest and whether there is a reasonable prospect of conviction in each individual case.

Young person acting under duress

A young person who knowingly and actively participates in the forced marriage ceremony may be able to raise the defence of duress. If the legal criteria for the statutory or common law defence of duress are met, the defence could be relevant in a forced marriage ceremony situation involving an accused youth. Duress provides a complete defence to a crime. It requires a person who committed an offence to have done so as a result of threats of serious bodily harm or death, where the threats were made to get them to commit the specific offence they committed; having a generalized fear of one's father, for instance, would not be sufficient. Duress also requires that the person have "no legal way out" of the situation other than committing the offence.

Proposed peace bond

The application of the availability of the proposed forced marriage peace bonds to youth is consistent with the current availability of general peace bonds. Subsection 14(2) of the YCJA provides jurisdiction to a youth justice court to make orders under the *Criminal Code* recognizance provisions, except where the recognizance could have an adverse impact on youth. Therefore the YCJA specifies that *Criminal Code* sections 810, 810.01, and 810.2 apply, while excluding section 810.1. The latter could have the effect of prohibiting a young person from attending places where persons under the age of 16 could be expected to be present, as well as at a daycare centre, school ground or playground, and therefore is not provided for in the YCJA. The proposed new peace bond provision (section 810.02) is similar to the existing section 810 provision, which is currently included in subsection 14(2) of the YCJA. The purpose of the specific peace bond is to point to the forced or underage ceremony as a form of personal injury offence that would be covered to permit the issuance of these protective and preventive orders. Moreover, having the forced marriage peace bonds available for youth provides police and prosecutors with additional alternatives to charging the youth with an offence related to forced marriage.

Protected "B"

Recommendation 2:

That law enforcement authorities consult with child protection specialists (e.g., child welfare agencies or appropriate community based services) prior to initiating a legal process involving criminal law sanctions in order to identify and provide less intrusive alternatives to protect and support the child(ren) and restore or preserve their familial relations.

Response:

This recommendation is directed towards agencies that are under provincial jurisdiction, with the exception of law enforcement authorities in the territories. Nonetheless, the Department of Justice Canada has organised seven sector-specific training workshops on forced marriage, including with front-line workers, shelter workers and child protection officials. The Department has also presented on the issue to the Directors of Child Welfare and to counsel working in child protection in order to highlight risks associated with these forms of child abuse.

Recommendation 3:

That Canada take all due legal and administrative measures to ensure the unfettered access across borders by a child or children to a parent from whom they have been separated in the context of immigration – such as where a parent dissolves a polygamous union for the purpose of emigration to Canada and leaves a child or children behind in the country of origin.

Response:

This recommendation is directed towards Citizenship and Immigration Canada.

Question Period Note

FAMILY VIOLENCE IN CANADA: A STATISTICAL PROFILE, 2012 and 2013

ISSUE:

The Canadian Centre for Justice Statistics released a *Juristat* article entitled, *Family violence in Canada: A statistical profile, 2012 and 2013*, on January 15, 2015.

PROPOSED RESPONSE:

- This government is firmly committed to protecting Canadians from all types of violence, including family violence, and to holding perpetrators accountable for their acts.
- Recent measures demonstrate this Government's commitment to improving the justice system response to family violence.
- Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*, will help protect potential victims of underage or forced marriages by criminalizing conduct related to underage and forced marriage ceremonies, and creating a preventive court-ordered peace bond.
- We have also proposed the *Common Sense Firearms Licensing Act* (Bill C-42) to strengthen the firearm prohibition provisions in the *Criminal Code* with respect to persons convicted of violence towards family members and intimate partners.

BACKGROUND:

As the lead department, Statistics Canada (Canadian Centre for Justice Statistics) is responsible for media inquiries on the methodology and findings noted in the report.

The Canadian Centre for Justice Statistics has released an annual Family Violence in Canada report since 1998 under the Federal Family Violence Initiative. This annual report provides the most current data on the nature and extent of family violence in Canada, as well as trends over time, as part of the ongoing initiative to inform policy makers and the public about family violence issues.

In addition to providing an overview of family violence in Canada, this year's report profiles three forms of family violence: intimate partner violence, family violence against children and youth, and family violence against seniors aged 65 and older.

Highlights:

- Police-reported data from 2013 show 26% of violent crime victims were victimized by a family member. The rate of violent victimization that was not family-related was three times higher than family-related victimization in 2013 (712.8 victims per 100,000 versus 252.9 per 100,000).
- Spousal violence was the most common form of police-reported family violence in 2013 with 48% of family violence perpetrated by a current or former spouse (married or common-law); however, an analysis of violence between intimate partners found violence between dating partners was more common than spousal violence, with more than half (53%) of cases of intimate partner violence occurring between dating partners.
- Most victims of all types of police-reported family violence in 2013 were female (68%), with adults in their 30s having the highest rates. Common assault was the most frequent form of family violence reported to police (58%), followed by intimidation offences (17%), which includes criminal harassment and uttering threats.
- Charges were laid more often in police-reported family violence incidents (56%) than in violent incidents that were not family violence-related (46%).
- Trend data indicate that most types of police-reported family violence have decreased in recent years across the country. Nationally, family-related physical assaults decreased by 6% and family-related sexual assaults decreased 9% from the previous year. There was, however, a slight increase in the rate of sexual assault against spouses, which rose slightly between 2009 and 2013 (3%).
- Of the approximately 58,000 children and youth who were victims of a police-reported violent crime in 2013, 29% were victimized by a family member. The rate of family violence against children was 243.5 victims per 100,000 Canadians under the age of 18.
- There has been a decrease in the police-reported rates of both physical and sexual assaults perpetrated by a family member against children and youth over the last five years. The territories have the highest rates of family violence against children and youth; more than double the national rate.
- Seniors had the lowest police-reported rates of family violence of all age groups in 2013 with just over 2,900 seniors (56.8 victims per 100,000 seniors) victimized by a family member. Senior victims were most likely to be victimized by their own adult children. Seniors in census metropolitan areas faced a lower risk of family violence than those in smaller towns and cities.

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Coordination Section

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Gauthier, Amy-Lyne

From: Gauthier, Amy-Lyne
Sent: Friday, January 23, 2015 3:17 PM **s.19(1)**
To: [REDACTED]
Cc: [REDACTED] * CPAU Group
Subject: Bill S-7 speeches
Attachments: Minimum Age (10 mins) (CPAU and DMO) (2015-01-21) clean.docx; Provocation #1 (10 mins) (2015-01-21) (CPAU and DMO) clean.docx; Provocation #2 (10 mins) (CPAU and DMO) clean.docx; Peace Bonds #3 (10 mins) (2015-01-21) (CPAU and DMO) clean.docx; Criminal Code #4 (10 mins) (2015-01-21) (CPAU and DMO) clean.docx

Please find attached five 10 minute speeches for your review. I will await your comments before sharing with CIC.

Thanks!

Amy

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House of Commons

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

Second Reading

Minimum Age of Marriage

(10 Minutes)

January 2015

Mr. Speaker, thank you for the opportunity to speak in favour of Bill S-7. This Bill would amend the *Immigration and Refugee Protection Act*, the *Criminal Code* and the *Civil Marriage Act*, to provide additional protections for Canadians against certain practices involving violence against women and girls. I will be supporting this Bill and I would urge all honourable members to do so.

I wanted today to address some of the many misperceptions that have arisen during the debate on this Bill, in particular those with regard to the minimum age for marriage.

Mr. Speaker, this Bill would raise the lowest age at which anyone can marry in Canada to age 16, with no exceptions. Currently, federal law sets age 16 as the lowest age for marriage only in the Province of Quebec. Elsewhere in Canada, as there is no federal legislation, the old pre-

Confederation common law applies, which means that girls can marry at age 12 and boys at age 14.

Clearly this doesn't happen much anymore in modern Canada, but why should it be possible at all for those who are at risk? Raising the lowest age that anyone can marry to age 16 for all those who live in Canada would create a long-overdue new national standard that would increase protections for children, as no marriages could occur below that age.

During the debate, some asked why the Government of Canada is proposing to lower the minimum age of marriage to 16. They believe that provincial law already sets the minimum age at 18 or 19. Mr. Speaker, this is a serious misunderstanding of the law, caused by confusion because constitutional jurisdiction over marriage is shared in Canada. Both Parliament and the provincial legislatures have

jurisdiction over complementary but different aspects of marriage.

Under the Constitution, only the federal Parliament can set the lowest age for anyone to marry, below which age there can be no marriage. The provincial legislatures can determine the age at which a child becomes an adult and can consent to marriage for themselves with no additional requirements. This is currently set at either age 18 or 19 depending on the province. For young people between the lowest age for marriage and the age of majority, provincial law requires the consent of the child's parents to any marriage. In the case of younger children who are closer to the lowest age for marriage, the provincial law may also require the approval of a court, or restrict such marriages to situations where the young couple is expecting a child.

As you can see, Mr. Speaker, provincial and federal laws work together, with federal law setting the lowest age for anyone to marry, and provincial laws adding requirements for marriages above that age until the child becomes an adult and can consent for him or herself.

Because the constitutional powers are complementary, it's not possible for provincial laws to set the lowest age for anyone to marry. And if federal law were to set a higher age, federal laws could not then create any exceptions for marriages below that age; for example, in cases where mature young people who are expecting a child wish to marry, but are not old enough to consent themselves to the marriage as adults.

As a result, this Bill would raise the current lowest age for anyone to marry up to age 16 for all those living in Canada, and provinces and territories would continue setting

additional requirements for mature young people who wish to marry between that federal minimum age of 16 and the age of majority as established by the province or territory of residence.

Under private international law rules, the lowest age for anyone living in Canada to marry would apply wherever in the world that marriage is conducted and registered. In other words, the Bill would also extend protections to Canadian children under the age of 16 who are taken out of the country to marry, or who are married through telephone or proxy marriages overseas while they remain physically present in Canada.

During the debates, some felt strongly that the Bill should instead propose to set the lowest age for marriage at age 18 instead of age 16 with no exceptions. Mr. Speaker, there has

been debate on this point for a very long number of years,
and not only in Canada.

In Canada, in 1972, a review of this issue by the federal, provincial and territorial Uniform Law Conference of Canada pointed out that attempting to set a single absolute lowest age below which no marriage can happen will always be difficult because individual young people develop and reach maturity at different rates. Most laws seek to set an age at which spouses would possess enough maturity and emotional and financial self-sufficiency to enable them to create a viable family unit, which will care for and protect any children. But it is not possible to have complete agreement on the "best" age for marriage. As the 1972 report states "Age is at best a rather rough expression of the various criteria that are relevant to determining when a person is ready for marriage."

It is for this reason that provincial and territorial laws require the consent of the parents for any marriage under the age of majority. In most cases, parents will be best placed to assess the degree of maturity of their child. At the same time, however, parental consent may not be enough to protect children in all instances. In the case of a forced marriage, it is often the parents who are forcing their child into the marriage, in a mistaken belief that it is in their best interests. My colleague, the Minister of Justice, has written to his provincial and territorial counterparts urging them to consider parallel amendments to provincial and territorial marriage laws to require the approval of the court for all marriages involving children under the age of majority for additional protections. We also have criminal law provisions proposed in this Bill that will protect mature minors from being forced into marriage by parents allegedly consenting on their behalf.

When we look at other countries that have had similar debates, the vast majority have also set the lowest age for anyone to marry at age 16, including the United Kingdom, Australia and New Zealand. Many countries that are cited as setting the minimum age for marriage at age 18 actually have a similar legal structure to that of Canada. They set age 18 as what is called the “free age”, or the age of majority – the age at which a child becomes an adult and can give consent to marry by him or herself with no additional requirements. In these cases, the age cited as the minimum free age is subject to a number of exceptions, so it is not the same as the lowest age for anyone to marry, as is proposed in this Bill. This has led to some confusion on this point.

Very few countries have set their lowest age for anyone to marry at age 18 – Switzerland and Pakistan have done so. However, Pakistan law appears limited to a criminal law penalty only for an underage marriage.

The proposal in the Bill to set a new national standard of age 16 as the lowest age that anyone living in Canada can marry is an important step to provide additional protections to children, and should be fully supported by this House.

I would urge members of this House to support this Bill.

Thank you.

DRAFT

House of Commons

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

Second Reading

**Provocation Defence: History of defence,
foreign law reform and battered women**

Speech # 2 (10 Minutes)

January 2015

Mr. Speaker, I am pleased to have the opportunity today to speak on Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*.

The Speech from the Throne in October 2013, committed to ensuring that early and forced marriage and other harmful cultural practices, such as polygamous marriages and so-called “honour” based violence, do not occur on Canadian soil.

Today I would like to speak to the proposed amendment to the provocation defence. There have been a number of misconceptions during the debate which I would like to address.

Much has been made of the fact that the defence has failed where it has been raised in the context of honour-killings.

While this is true to date, there is nothing preventing a court from accepting it in the future.

The defence was raised in at least three honour-killing prosecutions in Canada. The alleged provoking conduct in these cases was real or perceived marital infidelity and other conduct by the victim that the offender perceived as disrespectful or defiant toward them or their families. These particular claims failed due to the inadequacy of the supporting evidence.

The proposed amendment would modernize the defence so that it only applies where the alleged provoking conduct was objectively serious, namely where it would amount to a criminal offence with a maximum sentence of at least 5 years. The reform would limit the defence so that it no longer excuses murder where the provoking conduct of the victim was lawful.

In the Senate debates, some suggested that the defence of provocation is a longstanding and sound principle of criminal law that is operating in conformity with Canadian values and should not be changed, or that the proposed reform would limit the defence too much. The question for us as legislators is whether modern Canadian values do in fact support showing compassion and leniency to those who kill in response to something they find insulting or offensive. I believe they do not.

It is a different matter if the provoking behavior is objectively serious and unacceptable, such as criminal conduct. The defence would still be permitted where the provocation was a physical assault, or a threat, or other serious form of criminality.

In considering this proposal, it is also very important to understand the history of the provocation defence and the

experiences of other countries which share our common law tradition.

Historically, the defence of provocation emerged in the common law probably in the 16th century. Initially it was limited to certain categories of conduct related to men defending their honour, such as in a spontaneous fight or a duel, but also included finding another man committing adultery with their wife.

In the early common law, a man's wife was his legal property. The early provocation defence reflected the social and legal reality of the day, namely that adultery was "the highest invasion of property" (*Mawgridge* (1707) 84 E.R. 1107) and a man who killed in response to adultery was considered less blameworthy. It may surprise some to learn that in the history of our own common law tradition, the provocation defence was the original "honour defence".

At some point in its history, the honour-related basis for provocation was replaced with the idea that the law should make some allowance for “human frailty” where a person is provoked beyond the ability to exercise self-control. The specific categories of provoking conduct were eliminated, and the provocation defence was made available more generally and broadly, where a person killed after having lost self-control as a result of any kind of “wrongful act or insult” by the victim, so long as an “ordinary person” could also have been provoked to lose their self-control in the same circumstances, though not necessarily to the point of killing.

This is the form of the provocation defence that was incorporated into Canadian law in the 1800s, and it remains unchanged today.

However, freedom of expression is a cornerstone of a free and democratic society. There is no room to make

allowances for intentional killings on the basis of insult or offence. In my view, allowing the provocation defence to be invoked in response to mere insults or offensive conduct is inconsistent with core Canadian values of freedom of expression, liberty and gender equality.

Both internationally and domestically, the provocation defence has been the subject of similar criticisms from a range of quarters in recent years. Even the Supreme Court of Canada has referred to these criticisms in some of its rulings, stating that only Parliament can address these concerns.

Many continue to criticize the defence, pointing out that its historical origins still infuse throughout its application today. Provocation still operates to excuse male proprietary or possessory claims over women, which is at odds with our

modern values of gender equality and personal autonomy and freedom.

In the past decade, the legislatures of most jurisdictions with a similar common law history have acted to address some of the concerns. New Zealand and several Australian states have entirely abolished the defence. Most other Australian states have restricted the defence in some manner, as has the United Kingdom.

Just last year, the Australian state of New South Wales reformed its provocation defence, including by limiting its scope to provoking conduct that would be a relatively serious criminal offence. This is the approach proposed in Bill S-7.

Another question that was asked in the Senate was whether the proposed amendment would have the unintended

consequence of taking a viable defence away from battered women who kill their abusers.

This is another misperception. In Canada, the provocation defence is rarely raised in these circumstances. According to the relevant research, battered women do not typically kill “in the heat of passion” and “on the sudden” as the defence of provocation requires. These aspects of the provocation defence limit its application to battered women.

Most battered women who are charged with murder in Canada raise self-defence. They usually kill to protect themselves. Parliament recently simplified the law of self-defence in the *Citizen's Arrest and Self-defence Act*, which came into force in 2013. The reformulated defence of self-defence now makes explicit reference to certain factors that are relevant where a battered spouse is being prosecuted.

Some jurisdictions have amended their provocation defence to make it apply to battered women who kill, in particular by relaxing the requirement that the killing be done “on the sudden” after the provocation. This was not done in Canada, which further helps to explain why the defence is rarely raised by battered women.

It should be remembered that the provocation defence would still be available to anyone who kills on the sudden in response to provoking conduct that is a relatively serious criminal offence. Under the proposed reform, a battered woman, or anyone else, could still raise the defence if they kill in response to having been assaulted or threatened, or otherwise victimized in the criminal sense.

There are two primary objectives of this proposed reform.

The first is to prevent the defence from being raised in any future honour-killing case, before it is accepted by a court or

a jury for the first time. The second is to modernize the defence from the perspective of violence against women more generally, so that it can no longer be used to excuse spousal homicides based on lawful conduct.

The time has come for Canada to bring our law of provocation out of the 17th century and to align it with our modern values, as other like-minded nations have done. Our women and girls deserve nothing less.

I hope that all Members will support this proposal and all other elements of Bill S-7.

House of Commons

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

Second Reading

Criminal Code amendments – forced marriage

Speech # 4 (10 Minutes)

January 2015

Mr. Speaker, thank you for the opportunity to speak on Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*.

The Government has repeatedly demonstrated its commitment to making Canadian communities safer for everyone, including by taking action to prevent and address violence against women and girls. As Minister Alexander explained before the Senate Committee, all violent acts committed against women and girls are indeed barbaric. The Government has and continues to take action to address various forms of violence against women and girls.

There is increasing evidence that Canadians are being subjected to forced marriages. The Government has provided international assistance to individuals, including Canadian children, who were taken abroad for a forced marriage. While forced marriage can affect men and boys, it

is predominantly a form of gender-based violence targeting women and girls. It is clear that more needs to be done to tackle these unacceptable practices – practices which may violate basic human rights, cause harm to the victims and create barriers to the full participation of women in our free and democratic society. These forms of gender-based violence are being addressed by Bill S-7.

Bill S-7 contains important legislative measures which would protect potential and actual victims of forced marriage.

These measures would also provide protections against other harmful practices which predominately and adversely affect women and girls, such as polygamy and so-called “honour”-based violence.

In short, Bill S-7 proposes to set the absolute minimum age of marriage at 16 in the *Civil Marriage Act*, and entrench in that same *Act* the requirements that a marriage involve free

and enlightened consent and that all previous marriages be dissolved prior to entering into a new marriage.

While most of the actions that are usually taken to force someone into a marriage are already covered by Canadian criminal law, including assault, forcible confinement and sexual assault, Bill S-7 introduces changes to the *Criminal Code* to also criminalize active participation in an underage or forced marriage ceremony, and removing a child from Canada for these same harmful purposes. This Bill also expands the peace bond regime in the *Criminal Code* to provide for a new peace bond which could be ordered by the court to prevent an early or forced marriage from taking place in Canada or prevent a child from being taken out of the country to be forced into a marriage.

Another important change to the *Criminal Code* proposed in this Bill is to limit the defence of provocation so that it could

not be raised in cases involving so-called “honour” killings and in many spousal homicides, where the alleged provocation can often consist of verbal or other types of insults. While verbal insults may be unwelcome, they are not illegal behavior, and adults should not be able to use insults to justify murder.

Finally, this Bill puts forward important changes to the *Immigration and Refugee Protection Act* which would specify that a permanent resident or foreign national is inadmissible to Canada if they are or will be practicing polygamy in the country, adding to the current provisions that prohibit the practice of polygamy in Canada.

I would like to focus my remaining remarks on the proposed amendments to the *Criminal Code* that would help prevent forced marriages from occurring in Canada or with Canadians taken abroad.

In some of the media coverage and debates related to Bill S-7, there appear to be a number of misconceptions about the provisions in the Bill related to forced marriage, which I would like to address.

The first misconception is that the Bill bans individuals in a forced marriage from immigrating to Canada. Let me be very clear, the only immigration-related reform proposed in this Bill relates to the introduction of a new inadmissibility in relation to the practice of polygamy.

As regards forced marriage, this Bill proposes to codify the requirement for free and enlightened consent to marriage in the *Civil Marriage Act* and to introduce additional measures in the *Criminal Code* to prevent forced marriages from occurring and to sanction those that would harm another by forcing them into a marriage.

The second misunderstanding that I would like to address relates to the scope of the proposed criminal offence of participating in a forced marriage ceremony. The proposed offence would not criminalize mere passive attendance by a community member or relative at a forced marriage ceremony. Canadian criminal law does not impose liability on persons for merely witnessing wrongdoing and failing to stop it. An individual who is merely “at the scene” without any active conduct that is specifically directed toward helping the marriage ceremony occur, will not be subject to prosecution. The law requires active participation in the ceremony, such as acting as a signatory witness, driving an unwilling bride to the ceremony or restraining that individual so that they do not flee.

Moreover, this active participation has to be coupled with actual knowledge that one of the parties to the marriage is

marrying against their will. Mere suspicion or speculation that the marriage is forced would be insufficient to trigger criminal liability.

The third myth that I wish to dispel relates to concern that the victim of a forced marriage would be forced to criminalize their family members. This Government has heard the concerns expressed by some victims that, although they do not want to be forced into marriage, they also do not wish to see their loved ones criminally prosecuted. For this reason, the Bill is structured specifically to provide victims with a means of preventing a forced marriage from occurring in the first place through a process that does not involve a criminal prosecution. That process would be a new and targeted peace bond.

Peace bonds are preventative court orders contained in the *Criminal Code*. When a person is subject to a peace bond,

they have not committed a crime, and so will not have a criminal record unless they choose to violate the court order. As a result, the Bill would make it possible for a victim to get the protection she or he requires to prevent the forced marriage ceremony from happening without having to criminalize family members. The peace bond process would also not require the child to take an application to court, as the application is usually made by a police officer on behalf of the person who is afraid.

Finally, I would like to address one last misunderstanding related to the forced marriage provisions in this Bill. Some have claimed that this new offence is unnecessary, as the current criminal law is sufficient to address the use of force to make someone marry against their will. While it is indeed true that much of the conduct employed to force someone into a marriage is already covered by one or more of the existing criminal offences – such as assault or unlawful

confinement – this Bill fills a gap in the law specifically with the goal of preventing forced marriages from happening.

For example, currently, child protection officials are often unable to intervene to prevent a child from being removed from the country to protect them from a forced marriage abroad, because the marriage itself is not a crime under the law. This new offence makes it clear that celebrating or assisting at an unwanted marriage within which sexual offences are expected to occur, is in itself a crime, as it is a violation of the basic human rights of the individual to choose whether and to whom they will marry. Consequently, attempts to force someone into a marriage against their will or remove a child from Canada for a forced marriage, would now be sufficient to warrant the imposition of a peace bond.

It is this Government's priority to put an end to the victimization of Canadians, notably women and girls from

vulnerable segments of society. The legislative measures proposed in this Bill are a sincere attempt to address and prevent specific forms of gender-based violence that require prompt action. It is simply unacceptable for any woman or girl in Canadian society to be subjected to the violence and abuse typically encountered in a forced marriage. I therefore urge all Members to consider the important progress being made in this Bill and to express their support for Bill S-7.

DRAFT

House of Commons

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

Second Reading

**Provocation Defence:
Operation of the defence, purposes of the reform, honour-
killings and spousal killings**

Speech # 1 (10 Minutes)

January 2015

Mr. Speaker, I am pleased to have the opportunity today to speak on Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*.

In the Speech from the Throne in October 2013, our Government promised that it would ensure that early and forced marriage and other harmful cultural practices, such as polygamous marriages and so-called “honour”-based violence, do not occur on Canadian soil.

This Bill amends the *Immigration and Refugee Protection Act*, the *Civil Marriage Act* and the *Criminal Code* in a variety of ways to address these practices. For instance, Bill S-7 would create new and specific offences in the *Criminal Code* related to participation in a forced or early marriage ceremony, including taking steps to remove a minor from Canada for the purpose of such a ceremony abroad, and a

targeted peace bond that can be used preventively, before the marriage and its associated harms occurs.

Today I would like to speak about the proposed amendment to the *Criminal Code* that would limit the scope of the provocation defence.

During the debates and committee proceedings in the Senate, there appeared to be a number of misconceptions about the merits of the existing law and the reasons for the proposed law reform. I hope to clarify some of these matters today.

The defence of provocation is sometimes known as the “heat of passion” defence. The defence applies only to a charge of murder, and comes into play only if murder is actually proved. It is a partial defence, which means that where it is

successful, it does not give rise to a complete acquittal, but rather produces a verdict of manslaughter instead of murder.

The defence will be successful where the murder was committed in response to a “wrongful act or insult” from the victim that would be sufficient to “deprive an ordinary person of the power of self-control”, and where the accused acted suddenly “before there was time for his passion to cool.”

Although the defence is only partial, it provides two very significant benefits to an accused. First, a conviction for manslaughter, as opposed to murder, leaves the judge with wide sentencing discretion. Whereas a conviction for second degree murder carries a mandatory sentence of life in prison and strict parole ineligibility rules, a manslaughter conviction carries no mandatory minimum sentence except if a firearm is used, in which case the mandatory minimum sentence is a minimum of 4 years. In all other circumstances,

manslaughter carries no minimum sentence. At the sentencing stage following a successful provocation plea, the provoking conduct of the victim is taken into account again as a mitigating factor that can reduce the sentence that is imposed for manslaughter. As Members can see, the sentencing benefit provided by the provocation defence is indeed substantial.

The second benefit of the defence is that it allows a murderer to avoid the stigma associated with that label. In this regard, the defence stands as a societal justification or excuse for some murders over others, on the basis of something that the victim said or did, including, as I will describe, entirely lawful conduct. It is this aspect that we need as legislators to keep in mind when reviewing this provision; the law treats some killings as less blameworthy than others, and effectively says that murder isn't always murder.

Under the current law, which has been in the *Criminal Code* since 1892, to constitute provocation, the victim's conduct need only be "a wrongful act or insult." If the victim had a "legal right" to do what they did, this cannot be provocation. However, this exclusion is very narrow and only applies to conduct that is expressly legally authorized, such as a police officer executing a search warrant.

Provocation is permitted where the victim's conduct was lawful. The defence is in fact frequently raised where the alleged provocation was lawful conduct such as verbal insults or offensive gestures.

The proposed amendment would limit provocation so that it could only be raised where the alleged provoking conduct by the victim would amount to an offence punishable by 5 years in prison or more.

The defence would therefore still be available in cases where a person kills in the heat of passion provoked by criminal offences such as an assault, verbal threats, criminal harassment, theft or fraud of property over \$5000, extortion, and many others. Many provocation claims are in fact based on alleged provocation of a criminal nature.

The kinds of conduct that would no longer be treated as provocation would be verbal insults or other types of offensive, but lawful, behaviour. However unpleasant or hurtful an insult may be, if it is lawful conduct, it should not excuse or mitigate murder. In the debates in that other place, some suggested that this proposed reform goes too far and limits the defence too much. Canadians can and should be expected to control their reactions to verbal insults and offensive gestures other than by killing.

There are two primary objectives of this proposed reform.

The first is to prevent the defence from being raised in future honour-killing cases, possibly successfully. Young girls and women are sometimes killed because they refuse to follow their parents' wishes, for instance about dating or marriage partners, or how to dress or engage with society, and instead make their own choices, which is a fundamental freedom of everyone in Canada.

The defence has been raised so far in at least 3 murder prosecutions where the murder could be characterized as "honour-based". The defence failed in all three cases, which some have cited as proof that the law is working perfectly and does not need amending.

This is an overly optimistic view. For one thing, all three cases were appealed on complex questions of law and evidence, including how the defence should or should not

incorporate evidence of the accused's culture. These issues are not yet definitively resolved by the courts. Despite some discussion of gender equality in a few of these cases, none of the rulings established as a matter of law that the defence is excluded in honour-killing cases. It remains available to be argued by any person accused of murder.

Imagine a situation where a teenage girl does not wish to marry the person chosen for her by her parents, but in refusing their wishes she verbally insults their cultural heritage, community and beliefs. If one or both parents react on the sudden and kill the child, the defence could be raised and could potentially be successful.

A second objective of the proposed reform is to modernize the defence with respect to violence against women overall, so that it can no longer be used to excuse spousal murders resulting from the offender's violent reaction to the victim's

lawful conduct. There is a long history of the provocation defence being raised and sometimes accepted to excuse spousal murders in Canada, most disturbingly in the context of marriage breakdown.

These cases have not gone unnoticed. As one academic has noted in her review of the honour-killing provocation cases, “while it may be true that gender equality is, at a rhetorical level, a fundamental Canadian value and that violence against women is neither accepted nor encouraged in Canadian society, the operation of the defence of provocation in the criminal courts is certainly not exemplary of either of those values”.

[Rosemary Cairns Way, Culture, Religion and the Ordinary Person: An Essay on *R. v. Humaid*, 41 Ottawa L. Rev. 1 2009-2010]

Canadian judges and juries have accepted the defence where men murdered their current or former spouses, or their

former spouses' new partners, in response to other forms of lawful conduct such as: verbal insults; questioning paternity; refusal to talk privately following termination of a relationship; and real or perceived infidelity.

These cases are very similar to the “honour-killing” cases in that women are killed because husbands – or other family members – reacted violently when they failed to control her behaviour. Women and girls are still seen as the property of their husbands or their families, with their aspirations and desires subjected to the will of others “for their own good.” The principal difference is that the feelings of dishonour and shame are experienced at the family or community level in the case of honour-killings, and at the personal or private level in the case of spousal killings.

Those who respond with violence to insult or offense – or to a family member's exercise of their right to autonomy –

cannot be excused from responsibility where they intentionally kill; they deserve to wear the label of the crime they commit, murder, and suffer the penalty associated with that crime.

I urge all Members to support this important Bill.

House of Commons

Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act

Second Reading

Peace bonds

Speech # 3 (10 Minutes)

January 2015

Mr. Speaker, I am grateful to have the opportunity to speak today on Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*.

Bill S-7 introduces important legislative measures which would protect potential and actual victims of early and forced marriage. These measures would also provide protections against other harmful practices and forms of violence which predominately and adversely affect women and girls, such as polygamy and so-called “honour”-based violence. Bill S-7 proposes to set the absolute minimum age of marriage at 16 in the *Civil Marriage Act*, and codify in that same *Act* the requirements that a marriage involve free and enlightened consent and that all previous marriages be dissolved prior to entering into a new marriage.

This Bill also introduces changes to the *Criminal Code* to criminalize active participation in an underage or forced

marriage, and criminalize removing a child from Canada for these same harmful purposes. Moreover, Bill S-7 expands the peace bond regime in the *Criminal Code* to provide for a new court order designed to prevent an underage or forced marriage from taking place in Canada or prevent a child from being taken out of the country to be forced into a marriage.

In addition, Bill S-7 proposes to limit the defence of provocation in the *Criminal Code* so that it could not be raised in cases involving so-called “honour” killings and in many spousal homicides, where the alleged provocation often consists of verbal or offensive but otherwise lawful behaviour.

Finally, this Bill puts forward important changes to the *Immigration and Refugee Protection Act* which would specify that a permanent resident or foreign national is inadmissible if they practise polygamy in Canada.

I would like to focus my remarks today on the proposed forced and early marriage peace bond provisions of the Bill. The prevention of violence has been a key aspect of the Government's action on violence against women and girls. Expanding the peace bond regime in the *Criminal Code*, by way of the proposed amendments in Bill S-7, is consistent with these important efforts.

Peace bonds are preventative court orders under the *Criminal Code* which require a person to agree to specific conditions to keep the peace. A peace bond does not require a finding of guilt or result in a criminal conviction unless the conditions of the peace bond are proved to have been breached.

When a peace bond is issued, the Court imposes a mandatory condition to keep the peace and be of good

behaviour, and may also impose any other reasonable condition necessary to ensure the good conduct of the defendant.

The new peace bond provides guidance to the court in the types of optional conditions that may be imposed. Some of these are the same as other peace bonds in the *Criminal Code*, – for instance, no contact or communication with a person who fears for their safety – while others have been designed for the types of circumstances that would specifically assist in preventing a forced marriage:

- preventing the defendant from leaving the jurisdiction of the court;**
- preventing the defendant from making plans or arrangements related to the underage or forced**

marriage, such as booking a wedding venue or plane tickets to leave the country for the ceremony;

- requiring the defendant to surrender passports or other travel documents to the court; and**
- requiring the defendant to participate in a treatment program that includes family violence counselling.**

The proposed peace bond can last for a period of up to one year and up to two years if the defendant was previously convicted of a forced or early marriage offence. Subsequent peace bonds can be taken out on behalf of the victim should the threat of an early or forced marriage persist.

The new peace bond would play an important role with respect to those victims who may be reluctant to engage the authorities because they do not want their family members

prosecuted. In some cases, family members may be otherwise law-abiding individuals and their actions are simply misguided and not intended to be harmful. The availability of a peace bond would encourage potential victims to seek out the support of the criminal justice system without fear that family members will be criminally prosecuted.

However, peace bonds are enforceable through the threat of a criminal sanction. A violation of the terms of the peace bond is an offence under section 811 punishable by a maximum two-year prison sentence. Bill C-26, the *Tougher Penalties for Child Predators Act*, proposes to increase the maximum penalties for breaching a peace bond to four years imprisonment on indictment.

The proposed forced marriage peace bond provisions in the *Criminal Code* are similar to the highly successful civil

forced marriage protection orders available in the United Kingdom (UK). Apart from the fact that the UK forced marriage protection orders are civil, while the proposed forced marriage peace bonds in Bill S-7 are under the *Criminal Code*, they are otherwise alike in the many respects, for instance:

- **both are preventative court orders that do not constitute a criminal charge;**
- **both are available by way of an emergency application on behalf of the victim, and conditions can be applied against the defendant prior to a hearing on the merits;**
- **both require a hearing before a court; and**

- both rely upon a civil standard of evidence (balance of probabilities), as opposed to a criminal one (beyond a reasonable doubt).

It should be noted that any individual may make the application, including the victim, relatives or any other person. The victim is not required to apply for the peace bond themselves. In many cases, it would be expected that a police officer would swear the information against the defendant, although a child protection or victim service worker may do so as well.

Some have asked why this Government has not introduced civil forced marriage protection orders instead of peace bonds. The answer is fairly straight forward. In Canada, civil family violence protection orders generally fall under provincial jurisdiction, whereas the *Criminal Code* is federal.

Civil family violence protection orders are dependent on applicable provincial legislation. They are not available in all provinces and do not specifically address forced marriage. Bill S-7 proposes to use the jurisdiction of the criminal law to act for the protection of all vulnerable Canadians.

Moreover, protection orders stemming from the *Criminal Code* are more likely to be available to frontline police officers through databases such as the Canadian Police Information Centre (CPIC), which facilitates the enforcement of these orders.

Some have also questioned why these proposed peace bonds can be ordered against young people between 12 and 18 years of age. This is consistent with the current availability of general peace bonds. In addition, studies on forced marriage indicate that multiple family members can take part in the use of force for the purpose of compelling a

person to marry against their will, including siblings and cousins under the age of 18. Moreover, having the forced marriage peace bonds available for youth provides police and prosecutors with additional alternatives to charging the youth with an offence related to forced marriage such as assault, uttering threats or forcible confinement.

Based on the experience in the UK with their civil forced marriage protection orders, it is expected that the new forced marriage peace bond would not only encourage the reporting of potential early and forced marriage cases but also deter family members and other possible perpetrators from carrying out these harmful and utterly unacceptable practices.

I hope that all Members appreciate the importance of this Bill.

I encourage all Members to give Bill S-7 their full support.

Backgrounder

Government Actions to Create Safer Streets and Communities

Since 2006, more than 30 measures have been enacted into law and more have been introduced and are in the process of becoming law. These measures are intended to ensure that violent criminals are held accountable and that victims of crime are given a stronger voice.

<i>Tougher Penalties for Child Predators Act (Bill C-26)</i> (Introduced February 26, 2014)	The <i>Tougher Penalties for Child Predators Act</i> would require child sexual offenders to serve multiple sentences consecutively, one after another, instead of at the same time, increase maximum and minimum prison sentences for certain child sexual offences, and would create a High Risk Child Sex Offender Database.
<i>Justice for Animals in Service Act (Quanto's Law)(Bill C-35)</i> (Introduced May 12, 2014)	<i>Quanto's Law</i> is aimed at denouncing and deterring the wilful harming of specially trained animals used to help law enforcement officers, persons with disabilities or the Canadian Armed Forces.
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(Effective date: October 23, 2012)	
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participants) (Bill C-14) (Effective date: October 2, 2009)	reckless shootings, and created two new offences of aggravated assault against a peace or public officer and assault with a weapon on a peace or public officer.
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Victims	
<i>Zero Tolerance for Barbaric Cultural Practices Act (Bill S-7)</i> (Introduced November 5, 2014)	The <i>Zero Tolerance for Barbaric Cultural Practices Act</i> proposes to put an end to early and forced marriage, polygamy or other types of barbaric cultural practices.
<i>Victims Bill of Rights Act (Bill C-32)</i> (Introduced April 3, 2014, effective date pending)	The <i>Victims Bill of Rights Act</i> proposes to improve the experiences of victims of crime across the country by creating, at the federal level, clear rights for victims of crime, such as the right to information, the right to protection, the right to participation and the right to restitution.
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<i>An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service (Bill C-22)</i>	This legislation protects children from online sexual exploitation by requiring suppliers of Internet services to report online child pornography. It will help identify victims so they may be rescued, and will improve law enforcement's ability to identify, apprehend and prosecute offenders.

(Effective date: December 8, 2011)	
<i>Protecting Victims from Sex Offenders Act (S-2)</i> (Effective Date: April 15, 2011)	<p>The <i>Protecting Victims from Sex Offenders Act</i> strengthened the National Sex Offender Registry and the National DNA Data Bank through the following fundamental reforms:</p> <ul style="list-style-type: none"> • Automatic inclusion of convicted sex offenders in the registry; • Mandatory DNA sampling for convicted sex offenders; • Proactive use of the registry by police; • Registration of sex offenders convicted abroad; • Notifications to other police jurisdictions when high-risk registered offenders travel; • Operational and administrative amendments to enhance registry operations; and • Amendments to the <i>National Defence Act</i>.
<i>Serious Time for the Most Serious Crime Act (Bill S-6)</i> (Effective date: December 2, 2011)	The <i>Serious Time for the Most Serious Crime Act</i> ensures a "life" sentence means a lengthy period of incarceration by effectively repealing the "faint-hope clause," which allowed murderers to obtain early parole. This legislation spares victims' families the anguish of attending repeated parole eligibility hearings and having to relive their losses over and over again.
<i>Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act (Bill C-48)</i> (Effective dates: March 23 and December 2, 2011)	This legislation helps ensure that each life taken is acknowledged in the sentencing process and that those who commit multiple murders serve a sentence that adequately reflects the heinous nature of their crimes. For murders committed after December 2, 2011, it allows judges to impose consecutive parole ineligibility periods on individuals convicted of more than one first- or second-degree murder.
<i>Abolition of Early Parole Act (Bill C-59)</i> (Effective dates: March 23 and March 28, 2011)	This legislation abolished the current system of Accelerated Parole Review, which allowed those convicted of non-violent offences to obtain day parole after serving one-sixth of their sentence and full parole after serving one-third.
<i>Standing Up For Victims of White Collar Crime Act (Bill C-21)</i> (Effective date: November 1, 2011)	This legislation cracked down on white collar crime by toughening sentences for fraud, including a mandatory minimum penalty of imprisonment for frauds over \$1 million, and by requiring judges to consider restitution for fraud victims.
<i>Justice for Victims of Terrorism Act (Bill C-10)</i> (Effective date: March 13, 2012)	This legislation allows victims of terrorism to sue perpetrators and supporters of terrorism, including listed foreign states, for loss or damage that occurred as a result of an act of terrorism committed anywhere in the world.
Justice System Efficiencies	
<i>Fair and Efficient Criminal Trials Act (Bill C-2)</i> (Effective dates: August 15 and October 24, 2011)	This legislation ensures that "mega-trials," or large and complex cases involving illegal activities such as drug trafficking, white-collar crime, terrorism, organized crime or gang-related activity, can be heard more swiftly and effectively. The <i>Fair and Efficient Criminal Trials Act</i> will help improve Canada's justice

	system through stronger case management, reduced duplication of processes, and improved criminal procedure.
<i>Act to Amend the Criminal Code (Criminal Procedure, Language of the Accused, Sentencing and Other Amendments)(Bill C-13)</i> (Effective date: October 1, 2008)	<p>This legislation included:</p> <ul style="list-style-type: none">• Improving court-related language rights provisions;• Making non-communication orders more easily available so that victims of crime can be better protected from unwanted communications from offenders serving a jail term;• Clarifying penalties for impaired driving offences;• Increasing the maximum fine for less-serious offences (summary convictions) from \$2,000 to \$5,000 (the amount had not been updated in more than 20 years);• Clarifying and codifying the current state of the law with respect to the language of trial provisions; and• Creating a more efficient process for executing out-of-province search warrants.

The Government will continue to make progress to hold criminals accountable, put victims first, protect children, and make Canada's justice system more efficient.

-30-

Department of Justice Canada
February 2015

Minister of Justice
and Attorney General of Canada



Ministre de la Justice
et procureur général du Canada

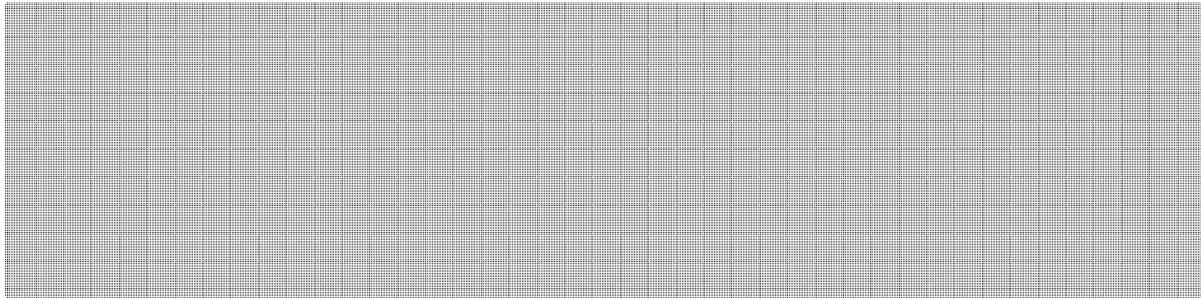
Minister's File : 160002 2014-016775

823 79
The Honourable Jonathan Denis, Q.C., M.L.A.
Minister of Justice and Solicitor General
Government of Alberta
403 Legislature Building
Edmonton AB T5K 2B6

s.13(1)(c)
s.14

Dear Minister Denis:





Yours truly,

Original signed by
Original signé par

The Honourable Peter MacKay

s.13(1)(c)

s.14

Enclosure

^

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MINISTER OF JUSTICE
MINISTRE DE LA JUSTICE



2014 DEC -5 P 12: 54

JUSTICE AND SOLICITOR GENERAL

RECEIVED/REÇU

Office of the Minister
MLA, Calgary-Audua

AR 10709

November 6, 2014

Honourable Peter MacKay
Minister of Justice
Government of Canada
284 Wellington Street
Ottawa, ON K1A 0H8

s.13(1)(c)

s.14

Dear Minister MacKay:



Printed on recycled paper



Sincerely,

[Redacted signature block]

Jonathan Denis, QC
Minister

s.13(1)(c)

s.14

s.19(1)

Gauthier, Amy-Lyne

From: [REDACTED]
Sent: Tuesday, February 17, 2015 11:45 AM
To: Gauthier, Amy-Lyne
Subject: Re: Pour info

s.19(1)

Merci!

From: Gauthier, Amy-Lyne
Sent: Tuesday, February 17, 2015 11:43 AM
To: [REDACTED]
Cc: Assad, Michael
Subject: Pour info

The *Criminal Code* has been amended twice to address female genital mutilation (FGM).

First, in 1993, section 273.3 (removal of child from Canada) was enacted which prohibits removing a child from Canada with the intention that an act be committed outside Canada that would be an offence under various offences, including section 268 (aggravated assault), if committed in Canada. Section 268 has always prohibited FGM.

Then, in 1997, section 268 (aggravated assault) was amended to clarify that aggravated assault includes FGM (Bill C-27).

Therefore, the *Criminal Code* clearly prohibits FGM and the removal of a child from Canada for that purpose.

Amy-Lyne Gauthier
Affaires du Cabinet et affaires parlementaires / Avocate
Cabinet and Parliamentary Affairs / Counsel

Secrétariat ministériel / Ministerial Secretariat
Justice Canada
284, Wellington, pièce / room 4234
Ottawa (Ontario) K1A 0H8

Tél. / Tel. : (613) 946-7048
Télec. / Fax : (613) 957-8382
amy-lyne.gauthier@justice.gc.ca

Gauthier, Amy-Lyne

From: Gauthier, Amy-Lyne s.19(1)
Sent: Thursday, February 26, 2015 2:52 PM
To: [REDACTED] s.21(1)(a)
Cc: Lafleur, Eric; * CPAU Group
Subject: S-7
Attachments: [REDACTED]

Here you go.

Amy

**Pages 766 to / à 769
are withheld pursuant to section
sont retenues en vertu de l'article**

21(1)(a)

**of the Access to Information Act
de la Loi sur l'accès à l'information**

Office of the
Prime Minister



Cabinet du
Premier ministre

Ottawa, Canada K1A 0A2

Backgrounder

GOVERNMENT ACTIONS TO CREATE SAFER STREETS AND COMMUNITIES

Our Government is committed to keeping our streets and communities safe for Canadians and their families. To this end, we have enacted more than 30 measures into law and introduced more which are in the process of becoming law. These measures are intended to ensure that violent criminals are held accountable and that victims of crime are given a stronger voice.

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DRAFT – NOT APPROVED – NOT FOR DISSEMINATION

4

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Protecting Canada's Seniors Act (Bill C-36) Effective date: January 13, 2013	The <i>Protecting Canada's Seniors Act</i> better protects seniors by helping ensure tough sentences for those who take advantage of elderly Canadians. Evidence that an offence had a significant impact on the victim due to their age – and other personal circumstances such as their health or financial situation – must be considered an aggravating factor for sentencing purposes.
Justice for Victims of Terrorism Act (Bill C-10) Effective date: March 13, 2012	This legislation allows victims of terrorism to sue perpetrators and supporters of terrorism including listed foreign states, for loss or damage that occurred as a result of an act of terrorism committed anywhere in the world.
An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service (Bill C-22) Effective date: December 8, 2011	This legislation protects children from online sexual exploitation by requiring suppliers of Internet services to report online child pornography. It helps identify victims so they may be rescued, and improves law enforcement's ability to identify, apprehend and prosecute offenders.
Protecting Victims from Sex Offenders Act (S-2) Effective Date: April 15, 2011	The <i>Protecting Victims from Sex Offenders Act</i> strengthens the National Sex Offender Registry and the National DNA Data Bank through the following fundamental reforms: <ul style="list-style-type: none"> • Automatic inclusion of convicted sex offenders in the registry; • Mandatory DNA sampling for convicted sex offenders; • Proactive use of the registry by police; • Registration of sex offenders convicted abroad; • Notifications to other police jurisdictions when high-risk registered offenders travel; • Operational and administrative amendments to enhance registry operations; and • Amendments to the <i>National Defence Act</i>.
Serious Time for the Most Serious Crime Act (Bill S-6) Effective date: December 2, 2011	The <i>Serious Time for the Most Serious Crime Act</i> ensures a "life" sentence means a lengthy period of incarceration by effectively repealing the "faint-hope clause," which allowed murderers to seek early parole. This legislation spares victims' families the anguish of attending repeated parole eligibility hearings and having to relive their losses over and over again.
Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act (Bill C-48) Effective dates: March 23 and December 2, 2011	This legislation helps ensure that each life taken is acknowledged in the sentencing process and that those who commit multiple murders serve a sentence that adequately reflects the heinous nature of their crimes. For murders committed after December 2, 2011, it allows judges to impose consecutive parole ineligibility periods on individuals convicted of more than one first- or second-degree murder.
Abolition of Early Parole Act (Bill C-59) Effective dates: March 23 and March 28, 2011	This legislation abolishes the previous system of Accelerated Parole Review, which allowed those convicted of non-violent offences to obtain day parole after serving one-sixth of their sentence without a formal parole hearing.

DRAFT – NOT APPROVED – NOT FOR DISSEMINATION

<p><i>Standing Up For Victims of White Collar Crime Act (Bill C-21)</i> Effective date: November 1, 2011</p>	<p>This legislation cracks down on white-collar crime by toughening sentences for fraud, including a mandatory minimum penalty of imprisonment for frauds over \$1 million, and requiring judges to consider restitution for fraud victims.</p>
<p style="text-align: center;">Justice System Efficiencies</p>	
<p><i>Fair and Efficient Criminal Trials Act (Bill C-2)</i> Effective dates: August 15 and October 24, 2011</p>	<p>This legislation ensures that "mega-trials," or large and complex cases involving illegal activities such as drug trafficking, white-collar crime, terrorism, organized crime or gang-related activity, can be heard more swiftly and effectively. The <i>Fair and Efficient Criminal Trials Act</i> helps improve Canada's justice system through stronger case management, reduced duplication of processes, and improved criminal procedure.</p>
<p><i>Act to Amend the Criminal Code (Criminal Procedure, Language of the Accused, Sentencing and Other Amendments) (Bill C-13)</i> Effective date: October 1, 2008</p>	<p>This legislation includes:</p> <ul style="list-style-type: none"> • Improving court-related language rights provisions; • Making non-communication orders more easily available so that victims of crime can be better protected from unwanted communications from offenders serving a jail term; • Clarifying penalties for impaired driving offences; • Increasing the maximum fine for less-serious offences (summary convictions) from \$2,000 to \$5,000 (the amount had not been updated in more than 20 years); • Clarifying and codifying the current state of the law with respect to the language of trial provisions; and • Creating a more efficient process for executing out-of-province search warrants.

The Government of Canada will continue to make progress to hold criminals accountable, put victims first, protect children, and make Canada's justice system more efficient.

Minister of Justice
and Attorney General of Canada



Ministre de la Justice
et procureur général du Canada

MAR 11 2015

Minister's File: 140029 14-013059

President

Canadian Council of Muslim Women

P.O. Box 154

Gananoque ON K7G 2T7

s.19(1)

Dear

Thank you for your correspondence, sent on behalf of the Canadian Council of Muslim Women, concerning violence against women. I regret the lengthy delay in responding.

I appreciate having received a copy of your report, *Violence against Women: Health and Justice for Canadian Muslim Women*. Please be assured that I have shared your correspondence with the appropriate departmental officials.

The Government of Canada takes the issue of violence against women very seriously. We are committed to improving our justice system's response to these crimes, and to ensuring that all Canadians can live in safe and healthy communities, free from fear of crime and violence.

The *Criminal Code* provides a broad-based response to all forms of violence against women. These measures include prohibitions on specific forms of violence such as assault, sexual assault, trafficking in persons, female genital mutilation, and criminal harassment. In addition, procedural protections, such as testimonial aids and court-appointed counsel for the cross-examination of self-represented accused, and preventative measures, including peace bonds and restraining orders, ensure that the criminal justice system is able to respond effectively to the needs of victims of violence.

Furthermore, under the *Criminal Code*, it is an aggravating factor for sentencing purposes when the offender abused his or her spouse or child, abused a position of trust or authority, or was motivated by bias, prejudice, or hate on the grounds of gender.

With respect to the issue of family violence, the Government has a long-standing commitment through the federal Family Violence Initiative (FVI) to help keep Canadians safe by addressing violence in relationships of intimacy, kinship, dependency, or trust. This initiative involves 15 federal departments and has the long-term goal of reducing the occurrence of family violence in Canada. The FVI receives permanent annual funding to

K.Ferguson(948-3013)/ce

promote public awareness of the risk factors of family violence and the need for public involvement; to strengthen the criminal justice, housing, and health systems; and to support data collection, research, and evaluation efforts to identify effective interventions. For further information on this initiative and the roles of participating departments, please visit www.phac-aspc.gc.ca/ncfv-cnivf/initiative-eng.php.

In addition, the Department of Justice Canada and Status of Women Canada co-chair an interdepartmental working group on early and forced marriage, "honour"-based violence and female genital mutilation/cutting. The working group involves 13 federal departments and agencies and acts as a focal point for collaborative actions. Like the United Nations and many countries, the federal working group uses the expression "honour"-based violence to identify a form of family violence that has some distinct risk factors that are pertinent from the perspectives of prevention, intervention, and protection; however, the working group places quotation marks around the word "honour" given that there is no honour in family violence.

Since 2009, the Department of Justice Canada has held seven workshops on forced marriage and "honour"-based violence with police, Crown prosecutors, front-line service providers, shelter workers, and child protection representatives. These workshops have brought together individuals from across the country to share their experiences in responding to these forms of family violence and to identify challenges and promising practices. The Department of Justice Canada also provides funding to non-governmental organizations for projects related to forced marriage.

As noted in your report, the defence of provocation has been used in cases of "honour" killing in some countries to justify a loss of self-control as a reaction to lawful actions of the victim. In recognition of this issue, on November 5, 2014, our government introduced into the Senate Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*, to limit the defence of provocation in the *Criminal Code* so that it can only be employed where the provoking conduct was a relatively serious criminal offence, punishable by at least 5 years in prison.

Bill S-7 also includes important legislative measures that address early and forced marriage. The Bill would set the minimum age of marriage at 16 in the *Civil Marriage Act* and would codify the requirements that a marriage involve free and enlightened consent and that all previous marriages be dissolved prior to entering into a new one. It would also amend the *Criminal Code* to criminalize the active participation in an underage or forced marriage ceremony and the removal of a child from Canada for these same purposes. Moreover, the Bill would expand the peace bond regime in the *Criminal Code* to include a new court order to prevent an underage or forced marriage from taking place in Canada or to prevent a child from being taken out of the country to be forced into a marriage. These proposed amendments will strengthen the existing tools that help prevent these forms of gender-based family violence. For more information on Bill S-7, you may wish to visit www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=6761928.

3

Please be assured that our government is committed to the long-term goal of increasing safety and reducing the occurrence of all forms of violence against women and girls across Canada.

Thank you again for writing.

Yours truly,

Original signed by
Original signé par,

The Honourable Peter MacKay

Gauthier, Amy-Lyne

From: [REDACTED]
Sent: Wednesday, March 11, 2015 11:35 AM
To: Assad, Michael
Cc: * PAU Group
Subject: S-7

Hey Mr. Assad, I'd like one more 10 minute speech for tomorrow's debate...

Sorry for the short notice...

[REDACTED] s.19(1)

[REDACTED]
Director of Parliamentary Affairs
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8
michael.bailey@justice.gc.ca

Gauthier, Amy-Lyne

From: [REDACTED]
Sent: Wednesday, March 11, 2015 5:27 PM
To: Gauthier, Amy-Lyne
Cc: Assad, Michael
Subject: Re: S-7 speech

Thank you.

s.19(1)

[REDACTED]
Director of Parliamentary Affairs
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8
michael.bailey@justice.gc.ca

From: Gauthier, Amy-Lyne
Sent: Wednesday, March 11, 2015 05:22 PM
To: [REDACTED]
Cc: Assad, Michael
Subject: S-7 speech

The speech is currently with DMO for approval but we will get it back tomorrow morning.

Thanks

Amy-Lyne Gauthier
Affaires du Cabinet et affaires parlementaires / Avocate
Cabinet and Parliamentary Affairs / Counsel

Secrétariat ministériel / Ministerial Secretariat
Justice Canada
284, Wellington, pièce / room 4234
Ottawa (Ontario) K1A 0H8

Tél. / Tel. : (613) 946-7048
Télec. / Fax : (613) 957-8382
amy-lyne.gauthier@justice.gc.ca

Gauthier, Amy-Lyne

From: Nesbitt, Scott
Sent: Thursday, March 12, 2015 7:58 AM
To: Gauthier, Amy-Lyne
Subject: Re: Urgent S-7

Will do

From: Gauthier, Amy-Lyne
Sent: Thursday, March 12, 2015 07:51 AM
To: Nesbitt, Scott
Subject: Re: Urgent S-7

Ok thanks. If ever I'm not there yet, could you please give to Michael Assad?

From: Nesbitt, Scott
Sent: Wednesday, March 11, 2015 09:08 PM
To: Gauthier, Amy-Lyne
Subject: Re: Urgent S-7

Sorry, I too had to leave before getting through this. But have a few comments that I will relay tomorrow morning.

Scott

From: Gauthier, Amy-Lyne
Sent: Wednesday, March 11, 2015 06:00 PM
To: Nesbitt, Scott
Subject: RE: Urgent S-7

I have to leave in a few minutes. If ever you leave it tonight, just leave it under my door please.

Thanks!

From: Gauthier, Amy-Lyne
Sent: Wednesday, March 11, 2015 5:23 PM
To: Nesbitt, Scott
Subject: RE: Urgent S-7

Thanks!

From: Nesbitt, Scott
Sent: Wednesday, March 11, 2015 5:23 PM
To: Gauthier, Amy-Lyne
Subject: RE: Urgent S-7

Will look at it now.

From: Gauthier, Amy-Lyne
Sent: Wednesday, March 11, 2015 5:22 PM
To: Nesbitt, Scott
Subject: Urgent S-7
Importance: High

I've left a speech for your review and approval.

This Bill is scheduled to be debated for the whole day tomorrow. 8 other speeches have already been provided but MO requested an additional one today. If I could get your comments by tomorrow morning that would be great.

Thanks!

Amy

Amy-Lyne Gauthier
Affaires du Cabinet et affaires parlementaires / Avocate
Cabinet and Parliamentary Affairs / Counsel

Secrétariat ministériel / Ministerial Secretariat
Justice Canada
284, Wellington, pièce / room 4234
Ottawa (Ontario) K1A 0H8

Tél. / Tel. : (613) 946-7048
Télec. / Fax : (613) 957-8382
amy-lyne.gauthier@justice.gc.ca

Gauthier, Amy-Lyne

From: Nesbitt, Scott
Sent: Thursday, March 19, 2015 10:36 AM
To: Gauthier, Amy-Lyne
Subject: RE: S-7 speeches

Okay, thanks.

From: Gauthier, Amy-Lyne
Sent: Thursday, March 19, 2015 10:35 AM
To: Nesbitt, Scott
Subject: S-7 speeches

Hi Scott,

This is just a heads-up that 4 speeches will be coming your way for approval.

CIC MO has asked to receive them today.

I'm waiting to receive them from SADMO.

Thanks,

Amy

Amy-Lyne Gauthier
Affaires du Cabinet et affaires parlementaires / Avocate
Cabinet and Parliamentary Affairs / Counsel

Secrétariat ministériel / Ministerial Secretariat
Justice Canada
284, Wellington, pièce / room 4234
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amy-lyne.gauthier@justice.gc.ca

Gauthier, Amy-Lyne

From: [REDACTED]
Sent: Thursday, March 19, 2015 4:43 PM
To: Gauthier, Amy-Lyne
Cc: [REDACTED] CPAU Group
Subject: Re: S-7 speeches

Please flip to your colleague.

s.19(1)

[REDACTED]
Director of Parliamentary Affairs
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8
michael.bailey@justice.gc.ca

From: Gauthier, Amy-Lyne
Sent: Thursday, March 19, 2015 04:41 PM
To: [REDACTED]
Cc: [REDACTED] * CPAU Group
Subject: S-7 speeches

Here are 4 speeches for CIC.

Please advise if you will be sending directly to CIC MO or if I should send to my colleagues at PAU CIC.

Thanks,

Amy-Lyne Gauthier
Affaires du Cabinet et affaires parlementaires / Avocate
Cabinet and Parliamentary Affairs / Counsel

Secrétariat ministériel / Ministerial Secretariat
Justice Canada
284, Wellington, pièce / room 4234
Ottawa (Ontario) K1A 0H8

Tél. / Tel. : (613) 946-7048
Télec. / Fax : (613) 957-8382
amy-lyne.gauthier@justice.gc.ca

Gauthier, Amy-Lyne

From: Nesbitt, Scott
Sent: Thursday, March 19, 2015 6:12 PM
To: Gauthier, Amy-Lyne; [REDACTED]
Cc: Lafleur, Eric; [REDACTED] Assad, Michael s.19(1)
Subject: RE: S-7 speeches

No comments from me, thanks.

Scott Nesbitt
Counsel / Avocat

Office of the Deputy Minister of Justice and Deputy Attorney General of Canada
Bureau du sous-ministre de la Justice et sous-procureur général du Canada
East Memorial Building, Room 4089
284 Wellington Street, Ottawa, Ontario, K1A 0H8

Tel: (613) 957-1524 / Fax: (613) 941-2279 / email: scott.nesbitt@justice.gc.ca

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From: Gauthier, Amy-Lyne
Sent: Thursday, March 19, 2015 5:41 PM
To: [REDACTED] Nesbitt, Scott
Cc: Lafleur, Eric; [REDACTED] Assad, Michael
Subject: S-7 speeches

As discussed,

I am sending two speeches that were previously submitted to your offices for approval. Most of those 2 speeches were however not read in the HoC therefore we have recycled them by removing the parts that were used and by adding a bit of information here and there.

Please advise as soon as possible if you have any comments on these. They are being submitted to DMO and MO at the same time since we need to send to CIC as soon as possible (tomorrow morning if possible).

<< File: speech #11 provocation defence March 19 2015 (CPAU) (2015-03-19) (clean) .docx >> << File: revised Speech 2 domestic and international considerations mb (2)(CPAU) (clean) (2015-03-19).docx >>

Thank you.

Amy-Lyne Gauthier

Cabinet and Parliamentary Affairs / Counsel

Secrétariat ministériel / Ministerial Secretariat
Justice Canada
284, Wellington, pièce / room 4234
Ottawa (Ontario) K1A 0H8

Tél. / Tel. : (613) 946-7048
Télec. / Fax : (613) 957-8382
amy-lyne.gauthier@justice.gc.ca

Savard, Angela

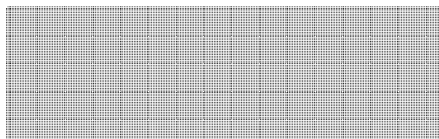
From: McLeod, Ian W (COMMS)
Sent: 2015-Mar-27 4:14 PM
To: [REDACTED]
Cc: [REDACTED] Gowing, Andrew
Subject: RE: Media enquiry: S-7 - Global News

Thanks!

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

From: [REDACTED]
Sent: March-27-15 4:14 PM
To: McLeod, Ian W (COMMS)
Cc: [REDACTED] Gowing, Andrew
Subject: Re: Media enquiry: S-7 - Global News s.19(1)

Good to go! Thanks!



From: McLeod, Ian W (COMMS)
Sent: Friday, March 27, 2015 03:52 PM
To: [REDACTED]
Cc: [REDACTED] Gowing, Andrew
Subject: RE: Media enquiry: S-7 - Global News

Ours were focused specifically on forced marriage, theirs on issues in their wheelhouse (CIC was clear that they were staying away from forced marriage in their response).

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

From: [REDACTED]
Sent: March-27-15 3:51 PM
To: McLeod, Ian W (COMMS)
Cc: [REDACTED] Gowing, Andrew
Subject: Re: Media enquiry: S-7 - Global News

Ok. Did we coordinate our responses with them? I just want to ensure we're not duplicating.

[REDACTED]

From: McLeod, Ian W (COMMS)
Sent: Friday, March 27, 2015 03:47 PM
To: [REDACTED]
Cc: [REDACTED] Gowing, Andrew
Subject: RE: Media enquiry: S-7 - Global News

CIC and Public Safety also received similar lines of questioning, but this came to us directly.

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

s.19(1)

From: [REDACTED]
Sent: March-27-15 3:47 PM
To: McLeod, Ian W (COMMS)
Cc: [REDACTED] Gowing, Andrew
Subject: Re: Media enquiry: S-7 - Global News

Just one more question. Was this sent to us by CIC or is there a reason why they are not responding?

[REDACTED]

From: McLeod, Ian W (COMMS)
Sent: Friday, March 27, 2015 03:25 PM
To: [REDACTED]
Cc: [REDACTED] Gowing, Andrew
Subject: RE: Media enquiry: S-7 - Global News

No worries. They're quite detailed, which is why I went with the attachment.

Media enquiry: Bill S-7

Media Outlet: [REDACTED] Global News

Questions:

I'm working on a story about forced marriages and Bill S-7 and have a few questions:

- Does Justice Canada have a plan in place if Bill S-7 is passed?
- How will you enforce the new laws, if passed?
- what would a sentence look like?
- What sort of 'evidence' would someone have to provide to ensure criminal charges would be laid?

Proposed Response:

Citizenship and Immigration is the lead department on Bill S-7.

1) Does Justice Canada have a plan in place if Bill S-7 is passed?

Criminal Code amendments proposed in the legislation would take effect on a date to be fixed by the Governor in Council.

Justice Canada has been working with other federal departments and agencies, provincial and territorial partners and non-governmental organizations on the measures to prevent and protect against these forms of family violence for many years. The Department continues to fund NGOs for the development of training materials, risk assessment tools and awareness raising materials for front-line workers coming into contact with victims of forced marriage and "honour" based violence. As a result of the collaborative work with multiple stakeholders, the Department is responding to calls for stronger prevention tools similar to the UK forced marriage protection orders. The equivalent to these protection orders can be found in the proposed new peace bond provisions in Bill S-7. These new protection orders rely on the new proposed offences in Bill S-7 related to underage and forced marriage.

Justice Canada also co-chairs, with Status of Women Canada, an interdepartmental working group on early and forced marriage, "honour" based violence and female genital mutilation/cutting under the auspices of the federal Family Violence Initiative. This working group is in the process of establishing a similar Federal/Provincial/Territorial forum for the sharing of information related to training, risk assessment and education and awareness raising in regards to these forms of family violence.

Justice Canada has collaborated with the RCMP to develop on-line police training materials on forced marriage and "honour" based violence. This training material is expected to be posted on the Canadian Police Knowledge Network and made accessible to other professionals working with victims of forced marriage and "honour" based violence, such as child protection officials and victim service workers. Justice Canada and the RCMP plan to continue this collaboration in updating this training material to reflect the proposed amendments in Bill S-7.

2) How will you enforce the new laws, if passed?

Specific cases of enforcement of any criminal offence would be a matter for law enforcement agencies and prosecution services.

3) What would a sentence look like?

A judge who sentences a person found guilty of an offence determines a fit sentence based on the given offence, the circumstances of each case and the sentencing principles set out in the *Criminal Code* and in the *Youth Criminal Justice Act*, whichever the case.

Information on the proposed sentencing provisions for the *Criminal Code* amendments in Bill S-7 can be found in this [backgrounder](#).

4) What sort of 'evidence' would someone have to provide to ensure criminal charges would be laid?

Evidence is specific to each individual case and generally all available evidence is considered by both police and prosecution at when considering whether to lay charges and to proceed with a prosecution of those charges. In deciding whether to lay charges, police consider whether there are reasonable grounds to believe that an offence has been committed.

In deciding whether to proceed with a prosecution, the prosecutor must first consider whether, based on all the available evidence, there is a reasonable prospect of conviction and whether a prosecution is in the public interest. As with all criminal offences, the Crown prosecutor must prove the existence of each element of the offence beyond a reasonable doubt. Any evidence proffered by the Crown prosecutor must be consistent with the laws of evidence set out in the common law and in the *Canada Evidence Act*.

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

From: [REDACTED]
Sent: March-27-15 3:23 PM
To: McLeod, Ian W (COMMS)
Cc: [REDACTED] Gowing, Andrew
Subject: Re: Media enquiry: S-7 - Global News

Hi Ian,

Sorry to ask, but can you paste them in the body of the email? Makes it easier to review on my bb.

[REDACTED]

s.19(1)

From: McLeod, Ian W (COMMS)
Sent: Friday, March 27, 2015 01:21 PM
To: [REDACTED]
Cc: [REDACTED] Gowing, Andrew
Subject: RE: Media enquiry: S-7 - Global News

Hi [REDACTED]

Here, for your review, are the proposed responses to this request. These were held up in policy for a bit, but the reporter's still quite keen to hear back. Please let me know if you have any concerns or revisions.

Thanks,
Ian

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

From: McLeod, Ian W (COMMS)
Sent: March-25-15 12:00 PM
To: [REDACTED]
Cc: [REDACTED] Gowing, Andrew
Subject: FW: Media enquiry: S-7 - Global News

Good morning,

We've just received another request from Global News on forced marriage. Working on putting together a response.

Media Outlet: [REDACTED] Global News ([REDACTED])

Questions:

I'm working on a story about forced marriages and Bill S-7 and have a few questions:

- Does Justice Canada have a plan in place if Bill S-7 is passed?
- How will you enforce the new laws, if passed?
- what would a sentence look like?
- What sort of 'evidence' would someone have to provide to ensure criminal charges would be laid?

Deadline: TBC

Thanks,
Ian

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Strategic Communications | Communications stratégiques
Communications Branch | Direction des communications
Department of Justice Canada | Ministère de la Justice du Canada
iwmcLeod@justice.gc.ca
Telephone | Téléphone 613-617-8327
Facsimile | Télécopieur 613-954-0811
Government of Canada | Gouvernement du Canada

Carson, Derek

From: Carson, Derek
Sent: 2015-Mar-31 12:33 PM
To: Nesbitt, Scott
Cc: Lafleur, Eric
Subject: RE: Undertaking - Citizenship Committee - Bill S-7 (Zero Tolerance for Barbaric Cultural Practices) - Justice study on provocation defence

Not yet, it's with the sector. They're reviewing it to make any necessary changes to prepare it for SADMO approval to share.

I can ask SADMO for an advance copy one they receive it?

From: Nesbitt, Scott
Sent: 2015-Mar-31 12:32 PM
To: Carson, Derek
Cc: Lafleur, Eric
Subject: RE: Undertaking - Citizenship Committee - Bill S-7 (Zero Tolerance for Barbaric Cultural Practices) - Justice study on provocation defence

Do you have a copy of the study yet?

From: Carson, Derek
Sent: Tuesday, March 31, 2015 12:28 PM
To: Nesbitt, Scott
Cc: Lafleur, Eric
Subject: FW: Undertaking - Citizenship Committee - Bill S-7 (Zero Tolerance for Barbaric Cultural Practices) - Justice study on provocation defence

Hi Scott,

As per my email below, Justice officials are working on getting approval to share with the Citizenship and Immigration Committee an internal study done on the provocation defence.

The study was not shared with the Senate Committee (I don't think the Senate Committee ever asked for it).

Please let me know if you have any concerns.

Thanks!

-Derek

From: Carson, Derek
Sent: 2015-Mar-31 12:24 PM

To: * SADMO/Admin

Cc: * CPAU Group

Subject: Undertaking - Citizenship Committee - Bill S-7 (Zero Tolerance for Barbaric Cultural Practices) - Justice study on provocation defence

Hi,

At the Citizenship and Immigration Committee meeting this morning, Justice officials were asked by Mr. McCallum to provide a study on the provocation defence, which was mentioned at the Senate Committee hearings (transcript link below):

http://www.parl.gc.ca/Content/SEN/Committee/412/ridr/14ev-51811-e.htm?Language=E&Parl=41&Ses=2&comm_id=77

"The defence is raised by, I've seen in one study, a quarter of men who are accused of killing their current or former spouses. We did a study of 50 appellate cases we found between 2000 and 2014, appeal cases that dealt with the defence of provocation. Of those 50 cases, 20 of the accused were men who had killed their current or former wives. It is rarely successful, but it is sometimes successful by men who kill their wives when the conduct that provoked them to kill was mere insults."

The Committee was told that in order to provide the study we would need Departmental/Minister's office approval.

Officials are aware and are in the process of preparing the study for SADMO approval. If approved, can you send it to CPAU and we will seek out DMO and MO approval to share with the Committee?

If approved, it will need to be translated so we can provide it in both official languages.

Please let me know if you have any questions or concerns.

Thanks very much,

Derek Carson

Analyst | Analyste

Cabinet and Parliamentary Affairs Unit | Unité des affaires du Cabinet et parlementaires

Department of Justice Canada | Ministère de la Justice Canada

284 Wellington Street, EMB - 4206 | 284 rue Wellington, ÉCE - 4206

Ottawa (Ontario) K1A 0H8

tel. | tél.: (613) 219-1880

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Government of Canada | Gouvernement du Canada

Case Name	Year	Court	Citation	Accused	Victim	Claimed wrongful insult?	Previous Relationship?	Defence successful at trial?	Other defences?	Basis of appeal	Appeal successful?	Involved consideration of provocation issues on appeal?
Stewart	2014	ONCA	2014 ONCA 70	M	M	Threat / physical violence	Yes - criminal associates - drugs	No	Self-defence	Incorrect jury instruction, failure to instruct jury on provocation, mishandling of evidence	No	Moderate - re: air of reality
Pappas	2013	SCC	2013 SCC 56	M	M	Extortion / threat of physical violence to family	Yes - victim had been extorting accused	Trial judge left provocation to jury, jury rejected it CA held provocation properly left with jury no errors in instructions.	No	Incorrect jury instruction, questions of law	No, plus court ruled there was no air of reality to the defence.	Yes
Bouchard	2013	ONCA	2013 ONCA 791	M	M	Homosexual panic (advances)	Yes - former coworkers and friends	No	No	Incorrect jury instruction, trial judge failed to adequately review mens rea evidence and relate it to the mens rea requirement.	Yes - the misdirection amounts to an error in law (of the provocation instruction). New trial ordered	Moderate - re: mens rea v defence of provocation
Cairney	2013	SCC	2013 SCC 55	M	M	Threat / physical violence against family member	Yes - good friends and roommates	Yes	No	Court of appeal overturned successful application of defence in stating there was no air of reality	No	Yes
Buzizi	2013	SCC	2013 SCC 27	M	M	Threat / physical violence against family member	No	No	Self-defence	Court of appeal incorrectly agreed that there was no air of reality to defence of provocation	Yes, jury's verdict of guilty set aside, new trial ordered There was an air of reality to the defence of provocation.	Moderate - re: air of reality
Hartling	2013	NSCA	2013 NSCA 51	M	M	Perceived threat of violence	Yes - townspeople	Not put to jury	Self-defence, accident	Improper instructions to jury, failure to leave defence of provocation, to jury, mishandling of evidence	No	Moderate - re: air of reality
Wright	2013	BCCA	2013 BCCA 70	M	M	Threat against family member	Yes - Cousins	No	Intoxication, self-defence	Trial Judge erred in rejecting defences without properly considering threats	Yes - new trial ordered because of misapprehension of evidence giving rise to a miscarriage of justice. New trial ordered	Moderate - re: air of reality
Angelis	2013	ONCA	2013 ONCA 70	M	F	Ending of marriage, infidelity	Yes - Married	No	Self-defence	Trial Judge erred in refusing to leave the defence of provocation to the jury and in jury instruction	Yes - new trial ordered, provocation had an air of reality	High
Mayuran	2012	SCC	2012 SCC 31	F	F	Insult centered around accused's education level	Yes - sister in law	Not considered	No	Crown appeal from order for new trial because of provocation.	Crown's appeal successful and conviction for murder restored. No air of reality for defence of provocation	High
Sainvil	2012	QCCA	2012 QCCA 1954	M	F	Wife met someone else, announced she wanted a divorce. The appellant raised the possibility of opening a provocation defense, relying on the fact that the victim had told him shortly before his death, "maybe your father was right" and "that's it, kill yourself " (my translation)	Yes - Married	No	No	The accused appealed almost every aspect of the trial judge's ruling and decision making during the trial.	No	Moderate - re: air of reality
Dagenais	2012	SKCA	2012 SKCA 103	M	Multiple	Claimed "unlawful act" of police car blocking his car, fear	No - victims (3) were police officers	Not put to jury	Self-defence	Improper instructions to the jury, lost/destroyed evidence	No	Moderate - re: air of reality
Krasniqi	2012	ONCA	2012 ONCA 561	M	M	Threat/ physical violence	No	Not put to jury	Self-defence	Improper instructions to the jury, failure to leave provocation to jury, admission of evidence of the peaceable disposition of the victim	No	Moderate - re: air of reality
Cassan	2012	MBCA	2012 MBCA 46	M	M	Physical violence	Yes - casual acquaintances	Not considered	Intoxication, self-defence	Error in treatment of defences of intoxication and provocation, and appeal from length of sentence	No	High

Evans	2012	BCCA	2012 BCCA 209	M	F	Belief that sexual service provider was making fun of his inability to perform a sexual act	No - victim was sexual service provider	Not put to jury	No	error in excluding/admitting evidence, improper instruction to jury, unreasonable verdict	No	Moderate - re: air of reality
Buzizi	2012	QCCA	2012 QCCA 906	M	M	Threat of physical violence	No	Not put to jury	Self-defence	Whether the trial judge erred in refusing to put the defence of provocation to the jury	Yes - there was an air of reality to the defence of provocation	High
Seide	2012	QCCA	2012 QCCA 201	M	M	Physical violence	No	Not put to jury	Self-defence	Improper instructions to the jury on intent, self-defence, and the judge made an error by not leaving provocation with the jury	No	Moderate - re: air of reality
Cairney	2011	ABCA	2011 ABCA 272	M	M	Threat / physical violence against family member	Yes - good friends and roommates	Yes	No	Appeal by Crown from acquittal for murder and conviction of manslaughter	Yes, no air of reality to provocation, new trial ordered.	High
Mayuran	2011	QCCA	2011 QCCA 1823	F	F	Insult centered around accused's education level	Yes - sister in law	Not considered	No	The judge should have raised provocation on her own (no evidence was presented by accused at trial).	Yes, new trial ordered. Trial judge ought to have put defence of provocation to jury.	Moderate - re: air of reality
Ward	2011	NSCA	2011 NSCA 78	M	M	Physical Violence	Yes - friends	Not put to jury	No	Error in admitting evidence, improper instructions to jury, unreasonable verdict, unfit sentence.	No	Moderate - re: air of reality
Flores	2011	ONCA	2011 ONCA 155	M	F	Victim told accused of new intimate partner a previous abortion, and that she was once again pregnant but with a new partner and wanted to keep the baby.	Yes - ex girlfriend	No	Intoxication	Improper instructions to jury, failure to fairly review evidence	Yes - not on ground of provocation. New trial ordered. There were deficiencies in the judge's instruction on fault element for murder.	Low
Dusseau	2011	QCCA	2011 QCCA 148	M	F	Offensive insults, advanced towards Dusseau with a small kitchen knife she was using to eat an apple	Roommates	Not put to jury	No	Error in failing to leave provocation to jury	No	Moderate - re: air of reality
Sheehan	2010	NBCA	2010 NBCA 85	M	M	Insult to Sheehan's partner	Friends	No	Intoxication	Error in dismissing provocation defence, and in reasoning	No	High
Tran	2010	SCC	2010 SCC 58	M	M	His estranged wife's involvement with a different person	Yes - had been surveilling wife and boyfriend	Yes	No	Appeal from judgment finding him guilty of murder (on Appeal court said no air of reality to provocation)	No	High
Ansari	2009	BCCA	2009 BCCA 381	M	M	Financial concerns	Yes - business	Maybe	Self-defence, mental disorder	Sentencing	No	No
Cudjoe	2009	ONCA	2009 ONCA 543	M	F	Infidelity / possible homosexual panic	Yes - spousal	No	Intoxication	Incorrect jury instruction	No	No
Gill	2009	ONCA	2009 ONCA 124	M	M	Physical violence / insult	No	Not put to jury	Self-defence	Failure to instruct jury on provocation	Yes	No
Neumann	2009	BCCA	2009 BCCA 296	M	F	Disrespect - from former spouse	Yes - spousal	No	Intoxication	Incorrect jury instruction	No	No
Pilon	2009	ONCA	2009 ONCA 248	M	M	Physical violence / insult - criminal activity	Yes - friendship	Not put to jury	Self-defence	Failure to instruct jury on provocation	No	No
Quinn	2009	BCCA	2009 BCCA 267	F	M	Physical violence	No	Not put to jury	Intoxication	Failure to instruct jury on provocation	Yes, but not on this ground	No
Azzam	2008	ONCA	2008 ONCA 467	M	F	Disrespect - of deceased father	Yes - stepmother/son	No	Intoxication	Incorrect jury instruction	No	No
Knibbs	2008	BCCA	2008 BCCA 426	M	M	Physical violence	Yes - criminal associates - drugs	No	Self-defence	Incorrect jury instruction	Yes, but re: self-defence	No
Tran	2008	ABCA	2008 ABCA 209	M	M	Infidelity - killing wife's new partner	Yes - accused knew estranged wife was seeing another man	Yes	No	Crown - incorrect application of provocation	Yes	Yes
Balance	2007	ONCA	217 CCC (3d) 379	M	M	Physical violence - towards A's cousin	No	No	Self-defence, defence of others	Incorrect jury instruction (re: unanimity)	Yes	Moderate - re: air of reality
Daigle	2007	QCCA	2007 QCCA 1344	M	F	Physical violence / threat to call police	Yes - romantic cohabitants	Not put to jury	Self-defence	Failure to instruct jury on provocation	No	Moderate - re: air of reality
Gosselin	2007	QCCA	2007 QCCA 101	M	F	Physical violence / decision to leave marriage	Yes - spousal	Not put to jury	Self-defence, intoxication	Failure to instruct jury on provocation	No	Yes
McDonald	2007	BCCA	2007 BCCA 224	M	F	Physical violence	Yes - spousal	No - not "on the sudden"	Intoxication	Error in law re: self-control	No	No
Stuart	2007	QCCA	2007 QCCA 924	M	M	Physical violence / threat	Yes - criminal associates - drugs	Not put to jury	Self-defence	Failure to instruct jury on provocation	No	Moderate - re: air of reality
Tremblay	2007	QCCA	2007 QCCA 696	M	F	Disrespect / infidelity (perceived)	Yes - spousal	Not put to jury	Intoxication	Failure to instruct jury on provocation	No	Moderate - re: air of reality
Willis	2007	ONCA	2007 ONCA 365	F	M	Physical violence - recent and historical	Yes - former spouses	Not put to jury	No	Failure to instruct jury on provocation	No	Moderate - re: air of reality
Humaid	2006	ONCA	37 CR (6th) 347	M	F	Infidelity	Yes - spousal	No	"disassociative state"	Incorrect jury instruction	No	Yes - particularly concerning cultural values and provocation

Joncas	2006	QCCA	2006 QCCA 416	M	M	Physical violence	Yes - friends / acquaintances	No	Intoxication	Incorrect jury instruction	Yes	No
Dhanda	2005	BCCA	2005 BCCA 533	M	M	Physical violence / threats	Yes - acquaintances	Yes	Self-defence	Sentencing	No	No
Flegel	2005	ONCA	196 C.C.C. (3d) 146	M	M	Homosexual panic (advances)	Yes - acquaintances	No	No	Incorrect jury instruction	No - court holds defence should not even have been put to jury	Yes - nature of "wrongful insult"
Gunning	2005	SCC	[2005] 1 S.C.R. 627	M	M	Trespass / disrespect / physical violence	No	No	Self-defence, intoxication	Incorrect jury instruction	No	Yes - on interaction between s. 41(2) and s.232(2)
Kent	2005	BCCA	2005 BCCA 238	M	F	Disrespect - concerning drug addiction, incest	Yes - spousal	No	Intoxication	Incorrect jury instruction	Yes	Yes - of law surrounding jury instructions
Samson	2005	QCCA	2005 QCCA 1151	M	F	Decision to leave marriage	Yes - spousal	Not put to jury	No	Failure to instruct jury on provocation	No	Moderate
Cairns	2004	BCCA	2004 BCCA 219	M	F	Demand of money for sex / disrespect re: nature of marriage	Yes - spousal	Yes	No	Sentencing - Crown	Yes	Moderate - some debate on characterizing insult
Calder	2004	BCCA	2004 BCCA 163	M	F	Physical violence	Yes - romantic	Not put to jury	Intoxication	Failure to instruct jury on provocation	No	Moderate - air of reality
Nahar	2004	BCCA	2004 BCCA 77	M	F	Disrespect / infidelity (perceived)	Yes - spousal	No	No	Discounting of cultural evidence	No	Yes - esp. concerning evidence to inform subjective and objective tests
Roberts	2004	ABCA	2004 ABCA 114	M	M	Threat / disrespect / property issues	Yes - business	Not put to jury	Self-defence	Failure to instruct jury on provocation	No	Yes - nature of "wrongful insult"
Clarke	2003	ONCA	172 OAC 133	M	M	?	Yes - friends	Probably	Intoxication	Sentencing - accused	Yes	No
Ruiz-Tagle	2003	BCCA	2003 BCCA 577	F	M	Disrespect / physical violence	Yes - spousal	No	Intoxication (automatism)	Trial Judge's rejection of provocation	No	No
Seyed-Fatemi	2003	BCCA	2003 BCCA 439	M	M	Physical violence	No	Not put to jury	Intoxication / automatism	Failure to instruct jury on provocation	No	No
Taylor	2003	BCCA	2003 BCCA 92	F	M	Physical violence	Yes - spousal	Not put to jury	Self-defence	Failure to instruct jury on provocation	No	Yes - on whether there was an air of reality
Gillett	2002	ONCA	159 OAC 247	M	F	Physical violence / disrespect	Yes - specific nature unclear	No	No	Incorrect jury instruction	Yes	No
Gibson	2001	BCCA	2001 BCCA 297	M	M	Disrespect of gf (sexual harrassment) / physical violence	No	Not put to jury	No	Failure to instruct jury on provocation	No	Yes
Hall	2001	ABCA	2002 ABCA 3	M	M	Sexual assault - of friend - earlier	Yes - acquaintances	No	?	Incorrect jury instruction	No	No
Lees	2001	BCCA	2001 BCCA 94	M	F	Threat / verbal abuse	Yes - spousal	No	Mental disorder automatism	Trial Judge's rejection of provocation - legal formulation and application of law	No	Yes
Parent	2001	SCC	[2001] 1 SCR 761	M	F	Disrespect - divorce property battles	Yes - spousal (estranged)	Yes	No	Incorrect jury instruction - Crown	Yes	Yes - re distinction between provocation and "anger going to intent"
Pawliuk	2001	BCCA	2001 BCCA 13	M	M	Threat - showing gun	Yes - criminal associates - prostitution	Not put to jury	Self-defence	Failure to instruct jury on provocation	No	No
Williams	2001	BCCA	2001 BCCA 648	M	M	Physical violence - towards friend	No	No	Self-defence, intoxication	Incorrect jury instruction	No	No
Davis	2000	MBCA	212 WAC 139	M	F	Disrespect - racial, sexual insults	Yes - neighbours	Yes	No	Sentencing	No	No
Edgar	2000	ONCA	142 C.C.C. (3d) 401	M	F	Physical violence / threat	Yes - romantic	Not put to jury	Self-defence, intoxication (cocaine)	Failure to instruct jury on provocation	Yes	No
Schell	2000	ONCA	148 C.C.C. (3d) 219	M	M	Physical violence	Yes - criminal associates - drugs	No	Self-defence	Incorrect jury instruction	Yes	No
Matthews	1999	NLCA	530 A.P.R. 281	M	M	Infidelity - girlfriend's new partner	Yes - knew of each other	Yes	No	No air of reality to provocation - Crown	Yes	No
Merasty	1999	SKCA	30 C.R. (5th) 274	M	M	Disrespect - Racial insult + insulting Accused's girlfriend	?	Not put to jury	No	Failure to instruct jury on provocation	No	No
Peters	1999	BCCA	119 B.C.A.C. 236	M	M	Trespass / threat (perceived)	Yes - neighbours	No	Self-defence	Incorrect jury instruction	No	No
Simpson	1999	BCCA	125 B.C.A.C. 44	M	F	Physical violence / threat	Yes - spousal	No	Intoxication	Incorrect jury instruction	No	Yes - on what's required for jury charge
Stone	1999	SCC	[1999] 2 SCR 290	M	F	Disrespect / insult sexual performance	Yes - spousal	Yes	Insane and non-insane automatism	Sentence	No	No

Carson, Derek

From: Carson, Derek
Sent: 2015-Apr-02 2:02 PM
To: [REDACTED]

s.19(1)

Hi [REDACTED]

Below is the link to the Senate Committee hearing where it was mentioned:

http://www.parl.gc.ca/Content/SEN/Committee/412/ridr/14ev-51811-e.htm?Language=E&Parl=41&Ses=2&comm_id=77

"The defence is raised by, I've seen in one study, a quarter of men who are accused of killing their current or former spouses. We did a study of 50 appellate cases we found between 2000 and 2014, appeal cases that dealt with the defence of provocation. Of those 50 cases, 20 of the accused were men who had killed their current or former wives. It is rarely successful, but it is sometimes successful by men who kill their wives when the conduct that provoked them to kill was mere insults."

Thanks!

Derek Carson

Analyst | Analyste

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Carson, Derek

From: Carson, Derek
Sent: 2015-Apr-02 1:45 PM
Subject: RE: Committee Reporting - Citizenship and Immigration - Bill S-7 (ZTBCEP) - March 31, 2015
Attachments: CIMMBLUES-43.pdf

Good afternoon,

Please find attached the unofficial transcripts from Tuesday's meeting of the Citizenship and Immigration Committee on Bill S-7.

Thank you!

-Derek

From: Carson, Derek
Sent: 2015-Mar-31 4:53 PM
Subject: Committee Reporting - Citizenship and Immigration - Bill S-7 (ZTBCEP) - March 31, 2015

Good afternoon,

Please find attached the report, prepared by our colleagues at Citizenship and Immigration Canada, on this morning's meeting of the Standing Committee on Citizenship and Immigration (CICM).

Overview of hearing

The Standing Committee on Citizenship and Immigration (CICM) met today as it began its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*) and heard from Minister Alexander as well as CIC and DOJ officials. In his opening remarks, the Minister spoke about provisions in the bill that would amend the *Immigration and Refugee Protection Act* (i.e. new ground of inadmissibility for practicing polygamy), the *Civil Marriage Act* (i.e. national minimum age of 16 for marriage; consent requirement; previous marriage dissolution requirement) and the *Criminal Code* (i.e. criminalizing officiating or participating in an underage or forced marriage; removing a minor from Canada for an underage or forced marriage; creating peace bonds to help prevent an underage or forced marriage; ensuring that legal conduct by the victim of an "honour killing" cannot be legally considered as "provocation") to help provide more protection and support for vulnerable individuals, primarily women and girls.

Members' questions focused on the short title of the bill, conditional permanent residency, consultations and studies, unintended consequences (harm to children when family members deported; inclusion of non-violent acts under provocation defense), other country comparison, prevalence of polygamy/early and forced marriages/honour killings, and peace bonds.

Follow ups:

DOJ officials agreed to provide a copy of an internal study related to the provocation defense that was referenced during Senate proceedings. PAU will coordinate tasking as applicable.

Next Meeting:

The Committee will next meet on April 21, 2015 to hear from stakeholders as it continues its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*).

Thank you,

Derek Carson

Analyst | Analyste

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REPORT ON COMMITTEE HEARINGS

Name of committee: Standing Committee on Citizenship and Immigration (CIMM)
Report prepared by: Tammy Bokhari, Parliamentary Affairs, 613-437-9099
Date and time: Tuesday, March 31, 2015, 8:45 a.m. to 10:45 a.m.
Location: Room 237-C, Centre Block

Witnesses

8:45-9:45 a.m.

Hon. Chris Alexander, P.C., M.P., Minister of Citizenship and Immigration

8:45-10:45 a.m.

Department of Citizenship and Immigration

Maureen Tsai, Director, Admissibility Branch

Karen Clarke, Deputy Director, Admissibility Branch

Paul Yurack, Counsel, Legal Services

Department of Justice

Gillian Blackell, Senior Counsel, Family, Children and Youth Sector

Lisa Hitch, Senior Counsel, Family, Children and Youth Sector

Joanne Klineberg, Senior Counsel, Criminal Law Policy Section

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Members' questions focused on the short title of the bill, conditional permanent residency, consultations and studies, unintended consequences (harm to children when family members deported; inclusion of non-violent acts under provocation defense), other country comparison, prevalence of polygamy/early and forced marriages/honour killings, and peace bonds.

Highlights of questions by committee members

NDP

Lysane Blanchette-Lamothe, (Official Opposition Citizenship and Immigration Critic) asked:

- *How many clauses in IRPA will be modified by Bill S-7?* The Minister spoke about the new provision for inadmissibility for those who practice polygamy.
- *Given Bill S-7 is only adding two paragraphs to one section of IRPA and most of the amendments proposed are to the Criminal Code, why is the bill being studied within the framework of immigration, rather than by the Justice Committee?* As a "matter of

teamwork”, and given the bill is the culmination of effort by multiple departments (Justice, Health, Status of Women, Foreign Affairs, CIC), the Minister noted that CIC was chosen as the lead and CIMM as the committee for bill study as the forced and early marriage component of the bill has the greatest potential applications in Canada within the immigration context.

- *Given Senate witness testimony that pointed out the bill title has racist stereotypes and encourages xenophobia towards racialized minorities, would the government change the title of the bill?* The Minister reiterated the government’s position that the bill title would remain as is, noting that people from all sorts of backgrounds and religions sometimes justify violence in the name of culture or family traditions, which is unacceptable.
- *Does the government intend to bring amendments to the conditional permanent residence (PR) requirement or plan to abolish it?* The Minister spoke about measures the government has taken to protect the residency status of women in abusive relationships, and stated that the government “will make changes if it will benefit women.”
- *Given witnesses have expressed concerns that the bill could decrease reporting, would the government consider changes to the bill to ensure more cases are reported?* The Minister replied that an increase in number of cases reported is anticipated.
- *Regarding consultations, could anyone attend, were all relevant service provider organizations invited, how were people invited/chosen, who decided who should be invited, was the content accessible to the public?* Ms. Tsai stated that the consultations were not open to the public and did not know if the content could be shared. Whereas she stated she couldn’t answer who decided who should be invited, Ms. Tsai noted that about 20 representatives from various stakeholder organizations were invited to each consultation.
- *Were practices in other countries studied in preparation of this bill?* Ms. Blackell stated that this was done, noting that at least 10 countries in Europe have introduced measures to address forced marriages.
- *Are there any studies that show setting a minimum sentence has a deterrent effect? (time expired)*

Irene Mathysen asked:

- *To what degree do we have polygamy in Canada (i.e. number of families that make it through the immigration system)? How is this determined?* Whereas accurate statistics on misrepresentation of immigrants is not available in this regard, the Minister stated that “we have heard of dozens of cases that are proven.” Ms. Tsai stated that the Minister had held roundtables with stakeholder organizations in Montreal, Toronto and Vancouver, during which stakeholders noted that polygamy exists.
- *In the case of polygamy, is everybody deported?* The Minister stated whereas Canadian citizens would not be removed from Canada nor have their citizenship revoked, permanent residents would be found inadmissible to Canada and be asked to leave and removed.
- *In cases of deportation, what about the unintended consequences such as impact on any children born in Canada?* The Minister and Ms. Tsai spoke about how these could be examined on a case-by-case basis, based on the best interests of the child.
- *In the consultations held, what did you hear about the potential harm of deportation on children?* Ms. Tsai indicated that this had not been raised during consultations specifically.
- *To clarify, do existing laws provide protection for children impacted by deportation of family members?* Ms. Tsai clarified that the humanitarian and compassionate consideration could be

given according to existing provisions in IRPA.

- *What departmental consultations have been done to ensure affordable housing and counseling for women and does the government plan to provide these services?* Ms. Blackell stated that the Department of Justice had conducted seven sector-specific roundtables to discuss any gaps. Both DOJ and Status of Women have also provided significant funding for projects related to forced marriages. There are also ongoing discussions with provinces and territories, as well as among an interdepartmental group on forced marriages.

Jasbir Sandhu asked:

- *How many cases have used provocation as defence and was the judge influenced by the defence?* Ms. Klineberg spoke about three cases, noting that none to date have been successful.
- *Regarding polygamy, isn't Bill S-7 creating two sets of rules, one for immigrants and one for citizens?* Ms. Klineberg noted that everyone in Canada is subject to criminal law.
- *Why not try immigrants under existing criminal law?* Ms. Tsai noted that criminal prosecution is handled at the provincial level, whereas IRPA only applies to foreign nationals and permanent residents.
- *What is the need to have an additional law? (time expired)*

Liberal

John McCallum, Citizenship and Immigration Critic asked:

- *Will the government remove the word "cultural" from the bill title to send a small signal to Muslim and other communities that the government is not out to get them?* The Minister noted there is a "culture of support for forced marriages in Canada that needs to be eliminated" and that the title would not be changed.
- *Given non-violent crimes such as theft and mischief also carry 5 year or more imprisonment terms and would be included in the provocation provision, would the government consider an amendment to address this unintended consequence?* Ms. Klineberg clarified that provocation could be considered for defence for some property offences where the value is over \$5,000 and punishable by up to a maximum of 10 years. However, the Minister noted that non-violent offenses are not likely to be used in the majority of cases.
- *Would there be a way to draft an amendment that would exclude non-violent acts?* Ms. Klineberg observed there would be a characterization challenge in defining how offenses would be identified.
- *In the House, the Minister of Revenue stated that the Minister of Justice was working with his provincial counterparts on a framework to limit marriage to 16 and 17 year olds to situations where a court has approved the union. Could the federal government suspend the application of the 16 and 17 year old marriage provisions until a provincial government has enacted rules as described?* Ms. Hitch noted that there would be no constitutional way to do that and the only way would be for the federal government to set the age at 16 or age 18 and no marriages possible below, but it would be within provincial jurisdiction to deal with what happens above it up to the age of majority.
- *Could officials provide a copy of the internal DOJ study on provocation that was referenced during Senate proceedings?* Ms. Klineberg undertook to follow up on the request and provide if possible the study of appellate cases from 1999 to 2014.

CPC

Costas Menegakis, Parliamentary Secretary for Citizenship and Immigration asked:

- *Explain how peace bonds work.* Ms. Blackell explained that the peace bond is similar to the UK civil protection order that has proven to be effective in preventing forced marriages.
- *Regarding peace bonds, what are the penalties?* Ms. Blackell noted that breaching a peace bond could lead to imprisonment of two years, whereas the maximum sentence for a forced marriage would be five years imprisonment.

Chungsen Leung, Parliamentary Secretary for Multiculturalism asked:

- *Elaborate on the distinct difference between barbaric cultural practices and hiding behind religious freedom.* The Minister stated Bill S-7 is strengthening Canada's laws to address barbaric practices "that masquerade as culturally acceptable or religiously acceptable practices."
- *Why has it taken so long to address minimum age for marriage?* Ms. Hitch hesitated to speculate and referenced a 1973 agreement to codify this.
- *How far do we go in defining an incestuous relationship?* (ruled out of order by the Chair)
- *How is the Civil Marriage Act being updated?* Ms. Hitch described the codification of three elements related to age, consent and dissolution of previous marriages.
- *How do peace bonds work?* Ms. Blackell explained that anyone could apply for a peace bond on behalf of a victim, such as child protection authorities or the police.

Devinder Shory asked:

- *How prevalent is forced and underage marriage in Canada?* The Minister reiterated that there are no definite statistics as these are practices that families try to disguise. However, over 200 cases were found in Ontario according to one study and DFATD has had 100 requests from consular officers since 2009 related to forced marriages.
- *How much funding does the Government provide to organizations that help victims?* The Minister indicated that "funding has grown significantly" and spoke about several government-funded initiatives involving Status of Women, Public Health Agency of Canada, Department of Health and Department of Justice.
- *Has the government made any exceptions for women regarding conditional PR?* Ms. Tsai described CIC guidelines developed for exceptions based on abuse and/or neglect.
- *How will "free and enlightened consent" assist law enforcers and affect those forced into marriage?* Ms. Hitch explained that, although it currently exists in common law, adding it in statute would help to protect children, as seen by the UK.
- *Regarding early and forced marriages, how are newcomers educated about these practices in Canada?* Ms. Tsai confirmed that both CIC's "Discover Canada" citizenship guide and "Welcome to Canada" orientation guide have been updated in this regard, along with information available on the CIC website.

Jay Aspin asked:

- *Elaborate on the peace bond.* The Minister explained that as no criminal charges would be laid, peace bonds are "an alternative solution that prevents early or forced marriages." Ms. Blackell explained that evidence needed to establish the peace bond would be based on the civil standard of evidence, based on the probability that family members would commit a crime.

- *How would this bill affect permanent residents who are practicing polygamy in Canada?* The Minister explained that if immigration officers are satisfied that polygamy is being practiced, a permanent resident could be removed from Canada.
- *What is the prevalence of forced and underage marriages in Canada?* Ms. Blackell reiterated that there is "no reliable statistical data"; however, prevalence is evident given the findings of two DOJ anecdotal studies and a study by the South Asian Legal Clinic of Ontario (SALCO).
- *Do families practice forced marriages outside the country?* Ms. Hitch noted that most studies don't distinguish between those done in Canada versus outside Canada, but it is believed that most occur outside Canada e.g. via telephone proxy marriages.
- *How will Bill S-7 help prevent family members from taking girls outside the country?* Ms. Blackell referenced the extension of existing provisions to underage or forced marriages, as well as the linkage to peace bonds.
- *What evidence exists regarding honour killings?* Ms. Blackell explained that there is "no actual legal category" however dozens of cases have been reported.
- *Will there be tracking/monitoring of honour killings?* Ms. Blackell noted that in order to track cases statistically, a category is needed in the Criminal Code. Since 1954 though, there have been 20 convictions for first or second degree murder related to honour killings.

Jim Eglinski asked:

- *What consultations have been done on the bill and what have you heard?* The Minister noted that "many consultations in major urban areas and beyond" have been conducted, and that the issues addressed are happening in Canada "on a significant scale", albeit "one case is too many".
- *Can you provide examples of when the provocation defense has been used?* The Minister referenced the Shafia case as the most famous, recent example and also cited a murder case in Ajax, emphasizing that the provocation defense is "absurd and repugnant to most Canadians."
- *Can you clarify the new minimum age requirement for marriage?* Ms. Hitch explained that whereas provinces currently provide the age of majority for marriage, it can be problematic as the marriage can't be invalidated once consummated under most provincial statutes.
- *What is the lowest age of marriage in Canada?* Ms. Blackell noted that in discussions with various provinces and territories, marriages at 14 years old have been registered in Saskatchewan. Ms. Hitch observed that there have been anecdotal reports of marriages as young as 12 for girls and 14 for boys according to common law.
- *If an individual were just a guest at a forced marriage wedding, would they be prosecuted?* Ms. Klineberg clarified that the amendments to the Criminal Code would affect primarily officials presiding over a ceremony who would be "celebrating" the marriage.

Follow ups:

DOJ officials agreed to provide a copy of an internal study related to the provocation defense that was referenced during Senate proceedings. PAU will coordinate tasking as applicable.

Next Meeting:

The Committee will next meet on April 21, 2015 to hear from stakeholders as it continues its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*).

Savard, Angela

From: McLeod, Ian W (COMMS)
Sent: 2015-Apr-02 10:00 AM
To: [REDACTED]
Subject: RE: Media call (referral): S-7 and forced marriage

Thanks.

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

From: [REDACTED]
Sent: April-02-15 9:57 AM
To: McLeod, Ian W (COMMS)
Subject: Re: Media call (referral): S-7 and forced marriage

s.19(1)

Hi Ian,

I think I forgot to get back to you last night. See below. Thanks!

Proposed response:

The amendments to the Civil Marriage Act proposed in Bill S-7 would add two aspects of current Canadian law that already exist in federal legislation. One is currently applicable in the Province of Quebec only (sections 5 and 7 of the Federal Law–Civil Law Harmonization Act, No. 1), and the other in the common law (court decisions) for residents of other provinces and territories:

- o i) the requirement for the free and enlightened consent of both persons; and
- o ii) the requirement to dissolve any prior marriage.

Canadian federal law concerning legal capacity to marry applies to a person who resides in Canada, whether their marriage is celebrated in Canada or abroad. Canadian law also already allows persons forced into a marriage to go to court to seek an order that the marriage is null (regardless of where the marriage took place). Bill S-7 would not alter the current law in that respect.

The advantage of putting the common law requirements into a federal statute is that it is more accessible to all Canadians. This could then be used by a person who does not want to marry to explain to their family that they have the right to say no. Adding the requirement of free and enlightened consent to the Civil Marriage Act and introducing a new national minimum age of 16 also serves as a basis for the proposed Criminal Code offences, and preventive court orders, related to forced and underage marriage. This will help prevent victimization of some of the most vulnerable Canadians: our children.

[REDACTED]

From: McLeod, Ian W (COMMS)
Sent: Wednesday, April 01, 2015 03:39 PM
To: [REDACTED]
Cc: [REDACTED] Gowing, Andrew
Subject: RE: Media call (referral): S-7 and forced marriage

s.19(1)

Hi [REDACTED]

Just following up on this one. I know it's a longer/more complicated answer, so please let me know if there are any changes.

Thanks,

Ian

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

From: McLeod, Ian W (COMMS)
Sent: March-31-15 5:55 PM
To: [REDACTED]
Cc: [REDACTED] Gowing, Andrew
Subject: Media call (referral): S-7 and forced marriage

Hi [REDACTED]

We've received another referral on S-7 for Global TV – this time on the civil marriage/forced marriage aspects. FCY Section has signed off on this response – please let me know if you have any concerns.

Thanks,

Ian

Media Outlet: [REDACTED] Global TV [REDACTED]

Questions:

I was wondering how the proposed amendments to the Civil Marriage Act will affect victims of forced marriage. If the Act changes, to reflect Section 4, 2.1. and 2.2. of Bill S-7, would it mean that someone could annul their marriage if they came forward and said that they did not in their minds consent to the marriage? How will the law determine who did not give free and enlightened consent, after a marriage ceremony has been performed?

Also, what powers would the Marriage Act have to reach Canadians who have been forced into marriages outside of Canada?

Proposed response:

- The amendments to the *Civil Marriage Act* proposed in Bill S-7 would add to the Act two aspects of current Canadian law that already exist in federal legislation applicable in the Province of Quebec only (sections 5 and 7 of the *Federal Law–Civil Law Harmonization Act, No. 1*), and in the common law (court decisions) for residents of other provinces and territories:
 - i) the requirement for the free and enlightened consent of both persons; and
 - ii) the requirement to dissolve any prior marriage.
- Canadian federal law concerning legal capacity to marry applies to a person ordinarily resident in Canada, whether their marriage is celebrated in Canada or abroad.
- Canadian law already allows persons forced into a marriage to go to court to seek an order that the marriage is null (regardless of where the marriage took place), and Bill S-7 would not alter the current law in that respect. It is difficult to obtain a legal annulment, however, because of the high legal threshold required to prove duress, and divorce is often a faster and cheaper option, depending on the facts in the individual case.
- The advantage of putting the common law requirements into a federal statute is that it is more accessible to all Canadians, as the Act will be easier for a person without legal training to find than the court decisions. This could then be used by a person who does not want to marry to explain to their family that they have the right to say no.
- Adding the requirement of free and enlightened consent to the *Civil Marriage Act* and introducing a new national minimum age of 16 also serves as a basis for the proposed *Criminal Code* offences, and preventive court orders, related to forced and underage marriage.

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Strategic Communications | Communications stratégiques

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Government of Canada | Gouvernement du Canada

Savard, Angela

From: McLeod, Ian W (COMMS)
Sent: 2015-Apr-10 7:52 AM
To: [REDACTED]
Cc: Gowing, Andrew; Chomski, Daniel
Subject: RE: Media call (referral): S-7 and forced marriage

It is, but it's not necessary. We could actually just go with "offered" in the interests of plain language.

Revised response:

We provided some further information on this to your colleague Megan Rowney on March 27th.

Evidence is specific to each individual case, and could include documents or witness statements. In deciding whether to lay charges and to proceed with a prosecution, the police and later the Crown prosecutor must first consider whether, based on all the available evidence, there are reasonable grounds for believing that the person committed an offence and the Crown must then consider whether there is a reasonable prospect of conviction and whether a prosecution is in the public interest.

As with all criminal offences, the Crown prosecutor must prove the existence of each element of the offence beyond a reasonable doubt. Any evidence offered by the Crown prosecutor must be consistent with the laws of evidence set out in the common law and in the *Canada Evidence Act*.

From: [REDACTED]
Sent: Friday, April 10, 2015 7:28 AM
To: McLeod, Ian W (COMMS)
Cc: Gowing, Andrew; Chomski, Daniel
Subject: Re: Media call (referral): S-7 and forced marriage

I'd add a "whether" before "a prosecution is in the public interest" but I'm ok with it. Also, is "proffered" used properly in the sentence? Can we simplify? Accepted?

[REDACTED]

From: McLeod, Ian W (COMMS)
Sent: Friday, April 10, 2015 06:54 AM
To: [REDACTED]
Cc: Gowing, Andrew; Chomski, Daniel
Subject: RE: Media call (referral): S-7 and forced marriage

s.19(1)

Hi [REDACTED]

Approvals for this came in late last night. As we provided a more detailed response to 16x9 previously, policy feels that an overview and referral to the previous response is appropriate (I'm inclined to agree). Please let me know if you have any concerns.

Thanks,
Ian

Proposed response:

We provided some further information on this to your colleague Megan Rowney on March 27th.

Evidence is specific to each individual case, and could include documents or witness statements. In deciding whether to lay charges and to proceed with a prosecution, the police and later the Crown prosecutor must first consider whether, based on all the available evidence, there are reasonable grounds for believing that the person committed an offence and the Crown must then consider whether there is a reasonable prospect of conviction and whether a prosecution is in the

public interest.

As with all criminal offences, the Crown prosecutor must prove the existence of each element of the offence beyond a reasonable doubt. Any evidence offered by the Crown prosecutor must be consistent with the laws of evidence set out in the common law and in the *Canada Evidence Act*.

From: McLeod, Ian W (COMMS)
Sent: Thursday, April 09, 2015 3:02 PM
To: [REDACTED]
Cc: Gowing, Andrew
Subject: RE: Media call (referral): S-7 and forced marriage

s.19(1)

FYI – we've had another follow-up from this producer. We had provided a response that covered most of this to another Global rep on March 27th, but I'm confirming with policy that there's nothing further to add. I will keep you posted.

Media Outlet: [REDACTED] Global TV [REDACTED]

Question:

If forced marriage is added to the Criminal Code of Canada, what sort of evidence would be required in order to secure a successful conviction? Also, Minister Alexander mentioned that the law passing would not mean that people will be forced to press charges if they are a victim of a forced marriage, but can you please tell me if, law enforcement, or any other entity would have a duty to charge someone with forced marriage?

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

From: [REDACTED]
Sent: April-02-15 8:10 PM
To: McLeod, Ian W (COMMS)
Cc: [REDACTED] Gowing, Andrew
Subject: Re: Media call (referral): S-7 and forced marriage

Thanks Ian,

See below. Thanks!

Bill S-7 aims to address forced marriages involving Canadians.

The proposed new offence would apply to forced marriages, meaning where one or both of the parties being married is doing so against their will. Forced marriages happen in the context of physical violence, abduction, forced confinement or other forms of force or abuse. It would not apply to a marriage where there is consent even if such consent is "less than enthusiastic" or "reluctant consent".

[REDACTED]

From: McLeod, Ian W (COMMS)
Sent: Thursday, April 02, 2015 06:49 PM
To: [REDACTED]
Cc: [REDACTED] Gowing, Andrew
Subject: RE: Media call (referral): S-7 and forced marriage

s.19(1)

Hi [REDACTED]

This proposed response to the Global followup on shotgun weddings and Bill S-7 was just approved by FCY. Please let me know if you have any concerns.

Thanks,
Ian

Proposed response:

Forced marriages have existed historically in Canada. Bill S-7 aims to address forced marriages involving Canadians.

The proposed new offence would apply to any forced marriage, meaning where one or both of the parties being married is doing so against their will. It would not apply to a marriage where there is consent even if such consent is "less than enthusiastic" or "reluctant consent".

If one of the parties is indeed marrying against their will, a person could be charged if they had specific knowledge that there was no consent, and they actively participated in the forced marriage ceremony, such as acting as a legal witness or the celebrant at the ceremony. Mere passive presence at the ceremony, even with knowledge that the marriage is being forced upon one of the parties, would be insufficient to trigger criminal liability.

From: McLeod, Ian W (COMMS)
Sent: Thursday, April 02, 2015 3:57 PM
To: [REDACTED]
Cc: Gowing, Andrew
Subject: RE: Media call (referral): S-7 and forced marriage

FYI – we've had a follow-up question on this. I'm following up with FCY about it.

Questions:

I do have one more question for you. How would the new law, if it passes, view a so-called "shotgun" (a man pressured to marry a woman due to unplanned pregnancy) type of wedding, and the sort of forced marriage that has been happening in Canada for many, many generations? Who, if anyone, would get charged in this instance?

I know the question might seem silly or trite, but I'm just wondering how a scenario like this – as old as Canadian history – would fit into the discussion of forced marriage. Critics of Bill S-7 say that forced marriage goes back to colonial times in Canada, and is nothing new here. The critics say the timing of the bill appears to target a certain demographic. Just wondering if you could please provide comment on this...

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

Carson, Derek

From: Carson, Derek
Sent: 2015-Apr-24 10:31 AM
Subject: RE: Committee Reporting - Citizenship and Immigration - Bill S-7 (ZTBCP) - April 23, 2015
Attachments: CIMM BLUES-44.pdf

Hi again,

Attached are the transcripts from the Citizenship Committee meeting on Bill S-7.

Thanks!

-Derek

From: Carson, Derek
Sent: 2015-Apr-24 9:53 AM
Subject: Committee Reporting - Citizenship and Immigration - Bill S-7 (ZTBCP) - April 23, 2015

Good afternoon,

Please find attached the report, prepared by our colleagues at Citizenship and Immigration Canada, of the April 23rd meeting of the Standing Committee on Citizenship and Immigration.

The transcripts will follow once they are available.

Overview of hearing

The Standing Committee on Citizenship and Immigration (CIMM) met today as it continued its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*). The Committee met *in camera* for the first 10 minutes, and then proceeded to hear from various stakeholders, chaired by Mme. Blanchette-Lamothe in lieu of Mr. Tilson.

In his opening remarks, Mr. Gora referred to anecdotal evidence of polygamy and forced marriages as well as the disturbing endorsement of polygamy by an Islamic cleric in the Greater Toronto Area. He spoke about the "dire need of widespread community awareness" by the government in South Asian and Middle Eastern media against barbaric practices such as forced marriages, honour killings and polygamy that are happening around the world under the guise of cultural practices. In her opening remarks, Ms. Desloges noted that the immigration-related provisions of the bill "send a very strong statement that polygamy is not and will not be tolerated in Canada", thereby making "a concrete statement about Canadian values". She expressed concern, however, about how practicing polygamy is not really defined in the bill, and refers instead to the *Criminal Code* definition that "leaves a huge grey zone for interpretation" and has only been tested once where even the attorneys general involved could not agree on the definition. This could be problematic, as the standard of proof required in an immigration context would be lower than that required by the *Criminal Code*. Ms. Desloges suggested that whether the bill's provisions involving deportation are applied retroactively could be clarified. Ms. Marshall focused her opening remarks on the importance of codifying the minimum age for marriage and criminal consequences for early and/or forced marriages. Noting that there was a time when spousal rape and domestic violence were considered legal, she observed that the government today should "not be afraid to label barbaric practices for what they are."

In the second panel, Ms. Siddiqui supported the bill in her opening remarks and rejected criticism that it calls certain cultures barbaric. She noted that the "very reasonable" provisions related to forced marriages and the minimum age for marriage would help prevent trafficking of helpless young women, and the provisions related to polygamy would be "bringing in sync rules and norms with existing domestic law."

In her opening remarks, Ms. Bhuyan commented on the bill's title, how the bill seeks to criminalize forced and early marriage, and how it would impact immigrants who are facing domestic violence. She recommended that the Government:

- Remove "barbaric cultural practices" from the bill title and refocus attention on promoting gender equity;
- Remove clause 9 amendments (new sections 293.1 and 293.2), which add indictable offences to anyone celebrating or taking part in a forced or early marriage, as it is unclear how the law will define forced marriage and who would be criminalized;
- Work with provinces on providing potential victims with the option of a civil path for protection;
- Further examine increased discretion for immigration officers, which, when combined with the lower burden of proof, could "lead to racist discrimination against immigrants", as well as put women who are spouses of polygamist men at risk of being deported or being separated from their children;
- Create a special unit within CIC focused on issues related to bill implementation, as "there are many forms of abuse that sponsors can use";
- Remove conditional PR, and/or provide an easy pathway to PR, that does not require the consent or consult of their sponsor, for women who are facing violence, including forced marriage, or who are in a polygamous relationship; the bill as it stands could create new ways for abusers to hold their victims hostage. She referenced ongoing research based on CIC data that indicates during the first 18 months of implementing conditional PR, out of the 12 cases that were referred for an exception based on abuse and neglect from the one-quarter of all sponsored spouses and partners given conditional PR, only 4 cases were granted an exception.

Ms. Marsh related her personal experience as a Jehovah's Witness being forced into a marriage at the age of 18 by her mother, which she recently shared with Maclean's magazine. She stated that "undue influence is at the core of forced marriages", and rejected the idea that forced marriages are culture-specific, given that her family has lived in Canada for over 5 generations.

Members' questions focused on the bill title, impact of conditional PR in abusive situations, protection of victims, definition of polygamy, raising awareness of Canadian values among newcomers, and the challenge of disseminating information in closed communities.

Next Meeting:

The Committee will next meet on April 30, 2015 to hear from stakeholders as it continues its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*).

Derek Carson

Analyst | Analyste

Cabinet and Parliamentary Affairs Unit | Unité des affaires du Cabinet et parlementaires

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REPORT ON COMMITTEE HEARINGS

Name of committee: Standing Committee on Citizenship and Immigration (CIMM)
Report prepared by: Tammy Bokhari, Parliamentary Affairs, 613-437-9099
Date and time: Thursday, April 23, 2015, 8:45 a.m. to 10:45 a.m.
Location: Room 253-D, Centre Block

Witnesses

8:55-9:45 a.m.

Tahir Gora, Director General, Canadian Thinkers' Forum

As individuals

Chantal Desloges, Lawyer, Desloges Law Group

Kathryn Marshall, Lawyer

9:45-10:45 a.m.

Salma Siddiqui, President, Coalition of Progressive Canadian Muslim Organizations

As individuals

Rupaleem Bhuyan, Professor, Faculty of Social Work, University of Toronto

Lee Marsh, President, Advocates for Awareness of Watchtower Abuses

Overview of hearing

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In the second panel, Ms. Siddiqui supported the bill in her opening remarks and rejected criticism that it calls certain cultures barbaric. She noted that the "very reasonable" provisions related to forced marriages and the minimum age for marriage would help prevent trafficking of helpless young women, and the provisions related to polygamy would be "bringing in sync rules and norms with existing domestic law."

In her opening remarks, Ms. Bhuyan commented on the bill's title, how the bill seeks to criminalize forced and early marriage, and how it would impact immigrants who are facing domestic violence. She recommended that the Government:

- Remove "barbaric cultural practices" from the bill title and refocus attention on promoting gender equity;
- Remove clause 9 amendments (new sections 293.1 and 293.2), which add indictable offences to anyone celebrating or taking part in a forced or early marriage, as it is unclear how the law will define forced marriage and who would be criminalized;
- Work with provinces on providing potential victims with the option of a civil path for protection;
- Further examine increased discretion for immigration officers, which, when combined with the lower burden of proof, could "lead to racist discrimination against immigrants", as well as put women who are spouses of polygamist men at risk of being deported or being separated from their children;
- Create a special unit within CIC focused on issues related to bill implementation, as "there are many forms of abuse that sponsors can use";
- Remove conditional PR, and/or provide an easy pathway to PR, that does not require the consent or consult of their sponsor, for women who are facing violence, including forced marriage, or who are in a polygamous relationship; the bill as it stands could create new ways for abusers to hold their victims hostage. She referenced ongoing research based on CIC data that indicates during the first 18 months of implementing conditional PR, out of the 12 cases that were referred for an exception based on abuse and neglect from the one-quarter of all sponsored spouses and partners given conditional PR, only 4 cases were granted an exception.

Ms. Marsh related her personal experience as a Jehovah's Witness being forced into a marriage at the age of 18 by her mother, which she recently shared with Maclean's magazine. She stated that "undue influence is at the core of forced marriages", and rejected the idea that forced marriages are culture-specific, given that her family has lived in Canada for over 5 generations.

Members' questions focused on the bill title, impact of conditional PR in abusive situations, protection of victims, definition of polygamy, raising awareness of Canadian values among newcomers, and the challenge of disseminating information in closed communities.

Highlights of questions by committee members

NDP

Irene Mathyssen asked:

- *How can victims be best protected?* Ms. Desloges recommended either interviewing the Canadian sponsor or education, to inform everyone involved in the process of their rights.
- *Comment on conditional PR status of women in abusive relationships.* Ms. Desloges recommended exempting coercion and forced marriage from the condition.
- *Are there enough protections for women to come forward?* Ms. Desloges suggested that the Board may want to consider allowing victims to testify behind a screen or not having to face the abuser in the same way as in a criminal court.
- *Does this bill have a potential to separate families?* Ms. Desloges expressed concern the bill may encourage people living in Canada to split up their families and ditch a spouse in order to become compliant, which could negatively impact any children and wife involved.

- *Are there enough resources to protect women (e.g. shelters, affordable housing, childcare)?* Ms. Desloges agreed that adequate resources are needed as economic security is a huge factor.
- *If you had known that your mother or other members of your community could have been criminally charged because of what they had done, would you still have followed through? Would possible shunning or exclusion from the community be a deterrent from reporting?* Ms. Marsh spoke about reporting her father to the police at age 12 for abuse and stated that knowing something is illegal would help a lot of young people to decide to go to the authorities. She agreed that shunning could be a deterrent, as it was the only community she knew.
- *Has any research been done regarding processing times for spousal sponsorship in different areas of the world? Does it make a difference if you're coming from Scotland or from Bangladesh?* Ms. Bhuyan spoke about increasing vulnerability to abuse and violence in relationships strained by lengthy wait times and stated that it would be worthwhile to find out if there was a pattern. She stressed the need to focus on family reunification, as when families are isolated, there is greater potential for family violence.

Jashir Sandhu asked:

- *Can you elaborate on a recent CBC panel quote referring to Bill S-7 as a smokescreen to increase immigration controls?* Ms. Bhuyan explained that given various changes in the last five years that have restricted the rights of immigrants as well as the omnibus crime bill several years ago, she had misgivings about increasing vulnerability for deportation in forced marriage cases, and how the Canadian government will define polygamous relationships in the context of very diverse relationships and sexual practices.
- *Will provisions on polygamy withstand a Charter challenge?* Ms. Bhuyan noted there could be a potential for misrepresentation for Canadian citizens, though primarily PRs or temporary residents or related applicants will be affected. She asserted that CIC profiles certain groups as part of the scrutiny for marriage fraud, resulting in longer sponsorship wait times for those groups, and the same profiling could be used in implementing the bill.
- *What impact does conditional PR have in abusive situations?* Ms. Bhuyan noted various concerns with the implementation of the exception provision by CIC based on preliminary findings of research done in Alberta and Ontario e.g.: the information that CIC officers have is very uneven; some people call CIC and do not get accurate information; and some cases are deemed not abusive enough to warrant the exception. She recommended that Canada consider "better options for victims of abuse to seek safety without the cooperation of their abuser", which is the policy of other countries, such as the US.

Liberal

John McCallum, Citizenship and Immigration Critic asked:

- *Could the bill be strengthened (e.g. set other conditions with provinces) to provide further protection to 16 year olds whose parents may be complicit in a forced marriage?* Ms. Marshall noted the importance of mapping out what informed consent would look like and stated that the bill "does a pretty good job by codifying the age of consent and also creating a provision for peace bonds". Ms. Marsh suggested an initial assessment by social services could be beneficial.
- *The definition of polygamy is not clear and we are now giving CIC the authority to deport people on the basis of polygamy, which has not even been clearly defined according to a lesser standard. This sets up an area of uncertainty and the possibility of abuse... (time expired)*

- *Should the bill include some definition of what polygamy is, not necessarily for application in general in Canada, but at least for application to the case of potential deportations, to provide clarity to potential offenders as to what it is they're not supposed to do?* Observing that deeming groups inadmissible for entering Canada is not necessarily going to change the practice of polygamy internationally, Ms. Bhuyan stated that with this bill "[is] just using the smokescreen of polygamy to increase immigration powers."
- *What can be done to minimize the impact of this bill on children of polygamist marriages?* Ms. Bhuyan encouraged the Committee to review a UNICEF-submitted brief to the Senate Standing Committee on Human Rights in response to Bill S-7, which outlined suggestions on how children could seek refuge in Canada or remain with their parent who is also part of the polygamist relationship.

CPC

Costas Menegakis, Parliamentary Secretary for Citizenship and Immigration asked:

- *Does this bill give an additional tool in the toolbox to help us combat a problem that unfortunately still exists, or is current legislation fine?* Ms. Desloges noted that whereas criminal prosecutions can be time consuming, expensive and with lots of checks and balances, an administrative process with a much lower standard or proof could make it easier to remove people from Canada. Mr. Gora stated that given polygamy cases are not registered and fall under the radar for the government, it is hoped there will be some punishment for clerics and those who facilitate polygamy in Canada. Ms. Marshall agreed the bill provides many tools by clearing up some of the ambiguities that exist within common law.
- *How will the bill prevent young girls from being taken off Canadian soil for forced marriage?* Mr. Gora stated that the bill would help to fight the sharia law mindset and help Canadian society by punishing those who facilitate forced marriages.

Chungsen Leung, Parliamentary Secretary for Multiculturalism asked:

- *Comment on the semantics of the use of "cultural" in the short title of the bill.* Mr. Gora stated that those cultures that support polygamy and forced marriages should be addressed and denounced. Ms. Desloges observed that the only polygamy case that went forward in a criminal context in Canada dealt with American Mormons, not Muslims. Ms. Marshall pointed out that just as people were offended by calling non-consensual sex between married people rape 33 years ago, so too are people being offended now by calling certain practices culturally barbaric.
- *Do you agree that acts such as early and forced marriages, honour killings, incest and polygamy are barbaric and should be criminalized?* Mr. Gora, Ms. Desloges and Ms. Marshall all agreed, with Ms. Desloges noting that she didn't think it should be in the title of the bill.
- *Will this bill give front-line workers a better tool to criminalize and even prevent honour-based violence, and how do our front-line officers prevent it?* Ms. Siddiqui stated the importance to train front-line workers and grant them more powers. Ms. Bhuyan stressed the need to change the definition of family violence to understand ways in which it can manifest in physical abuse, verbal threats, as well as forms of violence such as coercing someone into a marriage, as opposed to criminalizing someone's attendance at a marriage.
- *Would this bill have helped to prevent your forced marriage?* Ms. Marsh stated that if at 17, she had known that forced marriages were illegal, she may have reported her mother to the police.

- *How can information be disseminated, especially in the case of Jehovah's Witnesses, when they don't allow their children to be educated in the public school system?* Ms. Marsh noted an increasing "dangerous" trend of homeschooling and suggested that a requirement that children participate in a community based program once or twice a year where they can learn about human rights would be advantageous.
- *Can Jehovah's Witnesses access mobile technology and social networks?* Ms. Marsh explained that access to information is very limited and controlled even though more and more children do have cellphones and access to computers.

Devinder Shory asked:

- *Does this bill help victims of gender-based violence?* Ms. Marsh observed that the bill would have given her an out by enabling her to tell her mother what she was doing was illegal. At the same time, she stressed the importance of teaching children in school about their rights and what is legal/illegal.
- *How important is it that newcomers understand that practices such as polygamy are not welcome in Canada?* Ms. Siddiqui reinforced the importance of strictly having one law in Canada and denouncing sharia law that is allowing polygamous marriages.
- *Do you agree that ordinary Canadians deserve protection from barbaric practices regardless of the majority religion in the country or region?* Noting that the bill is not aimed at any one group, Ms. Siddiqui stated "We are in Canada, we have to live as Canadians and everyone has to accept that."

Jim Eglinski asked:

- *How does this bill impact children forced into marriage who don't want to be pulled away from their parents?* Ms. Marsh noted in her case that knowing there might have been agencies that could help might have made her less reluctant to tell anyone; however, ensuring such information is accessible to young people from closed communities is key.
- *What have other countries done to enforce this type of law?* Ms. Siddiqui encouraged the Committee to look at what the UK is doing, noting that Australia and the Netherlands have also examined similar issues.

Next Meeting: The Committee will next meet on April 30, 2015 to hear from stakeholders as it continues its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*).

Carson, Derek

From: [REDACTED]
Sent: 2015-Apr-28 4:42 PM s.19(1)
To: Carson, Derek
Subject: Re: Standing Committee on Citizenship and Immigration meeting on Thursday, April 30 at 8:45 a.m. (Bill S-7 - Zero Tolerance for Barbaric Cultural Practices Act)

Do you know how many meetings remain.

From: Carson, Derek
Sent: Tuesday, April 28, 2015 04:37 PM
To: * CLP SGC/Office; * SADMO/Admin
Cc: * CPAU Group; Nesbitt, Scott
Subject: Standing Committee on Citizenship and Immigration meeting on Thursday, April 30 at 8:45 a.m. (Bill S-7 - Zero Tolerance for Barbaric Cultural Practices Act)

FYI:

The Standing Committee on Citizenship and Immigration will hold its next meeting on Thursday, April 30, 2015 from 8:45 a.m. to 10:45 a.m. in Room 253-D, Centre Block, and will hear from stakeholders as it continues study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*).

Notice of Meeting:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=7940988&Language=E&Mode=1&Parl=41&Ses=2>

The meeting will be broadcast live on ParIVu:

<http://parlvu.parl.gc.ca/ParIVu/ContentEntityDetailView.aspx?contententityid=12895&date=20150430&lang=en>

Carson, Derek

From: Carson, Derek
Sent: 2015-Apr-28 5:11 PM
To: [REDACTED]
Subject: RE: Standing Committee on Citizenship and Immigration meeting on Thursday, April 30 at 8:45 a.m. (Bill S-7 - Zero Tolerance for Barbaric Cultural Practices Act)

Hi [REDACTED]

s.19(1)

The Committee will meet on Thursday and then likely May 5 and May 7, with one last meeting on May 12. The Committee agreed to have the Bill reported back to the House as early as possible after the meeting on May 12, so four meetings to go!

From: [REDACTED]
Sent: 2015-Apr-28 4:42 PM
To: Carson, Derek
Subject: Re: Standing Committee on Citizenship and Immigration meeting on Thursday, April 30 at 8:45 a.m. (Bill S-7 - Zero Tolerance for Barbaric Cultural Practices Act)

Do you know how many meetings remain.

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Minister of Justice
and Attorney General of Canada



Ministre de la Justice
et procureur général du Canada

Minister's File : 150019 2015-005732
A15-007593

JUN 29 2015

[REDACTED]
Grandmothers Advocacy Network
1903-20 Avoca Avenue
Toronto ON M4T 2B8

s.19(1)

Dear [REDACTED]

Thank you for your correspondence, sent on behalf of the Grandmothers Advocacy Network, concerning child, early, and forced marriage. My colleague the Honourable Rob Nicholson, Minister of Foreign Affairs, has also forwarded a copy of your correspondence. I regret the delay in responding.

The Government of Canada agrees that all children must be fully protected from child, early, and forced marriage. To that end, in November 2014, the Government introduced into the Senate Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*, which received Royal Assent on June 18, 2015, and will come into force in due course. Among other measures, the Act amends the *Civil Marriage Act* to establish age 16 as the absolute minimum age of marriage in Canada.

I note your suggestion that the absolute minimum age for marriage be 18. The question of whether age 16 or age 18 would better protect children has been the focus of a number of studies and reports, including by the Uniform Law Conference of Canada. It is a difficult and complex matter considering that individuals do not all conform to one single pattern of child development, but mature at different rates. Accordingly, the law has traditionally relied on parental consent, as parents are often in the best position to determine the maturity level of their own children. However, this requirement may not provide sufficient protection for minor children given that parental consent alone could be used to disguise a forced marriage.

The question is further complicated by the fact that the constitutional jurisdiction of the Parliament of Canada concerns the absolute minimum age for marriage. Unlike many other countries that have set age 18 as the minimum age for independent consent for marriage while allowing exceptions with some form of substitute consent, Canada cannot legislate in a way that would allow any exceptions below the legislated absolute minimum age.

J. Agnew (941-0333)/L.L./md

In addition, an absolute minimum age for marriage of 18 raises concerns regarding its effect on the liberty of mature minors, who would be barred from marrying the parent of their common child.

I believe that the Government's decision to establish a national minimum age for marriage of 16 balances the need to protect children from child, early and forced marriage with the desire of some mature minors to choose to marry before they reach the age of majority.

It may be helpful for you to know that each province and territory is responsible for setting the minimum age of marriage within its jurisdiction.

Thank you again for writing.

Yours truly,

Original signed by
Original signé par

The Honourable Peter MacKay

grandmothers
Advocacy Network



Mouvement de soutien des
grands-mères

150019

Advocating for grandmothers, vulnerable children and youth in sub-Saharan Africa

April 14, 2015

The Honourable Peter MacKay, P.C., M.P.
Minister of Justice
House of Commons
Ottawa, ON K1A 0A6

MINISTER OF JUSTICE
MINISTRE DE LA JUSTICE
2015 APR 23 P 2:01
RECEIVED/REÇU

Dear Minister:

GRAN' wrote to Minister Baird in October 2013 to express our agreement with the Government of Canada on the announced UN resolution to end child, early and forced marriage. At a meeting on May 23, 2014 between members of GRAN and Minister Baird and assistants, our support was reaffirmed.

We must now write to you express our concerns regarding the amendment to the Civil Marriage Act, specifically, clause 2.2. This amendment, included within the proposed amendments to the Immigration Act, Civil Marriage Act and Criminal Code currently before the House, is problematic because it:

- establishes 16 as a new minimum age of marriage in Canada, which is **inconsistent with Canada's leadership internationally** to end child (under 18), early and forced marriage; and,
- **it continues to allow child marriage in Canada**

According to the UN Convention on the Rights of the Child, a child means every human being below the age of 18 years. While there is provision for exemptions to the minimum age based on exceptional circumstances, it is recognized that child marriage is any marriage where at least one of the parties is under 18 years of age (CEDAW/C/GC/31-CRC/C/GC/18, 4 November 2014).

Adulthood in Canada begins with the age of majority of 18. The age at which a person is legally free to marry is 18 (19 in some provinces). Marriage at 16 and 17, even with parental or judicial consent, still constitutes child marriage.

In his address to the House of Commons on Nov 5, 2014, Minister Alexander was unequivocal in his views that 'no young girl or no woman in this country should be subject to forced or early marriage, meaning marriage before the age of 18'.

Internationally, Canada is at the forefront of a campaign to end child, early and forced marriage world-wide. In November 2014, under the co-sponsorship of Canada and Zambia, Member States adopted a strong UN Resolution to End Child, Early and Forced Marriage. Country reports on its implementation, including Canada, will be tabled at the UN General Assembly in 2015.

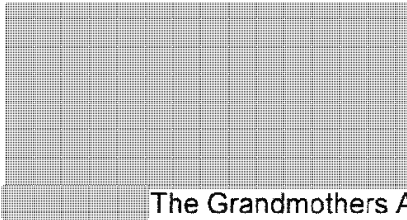
Canada is expected to lead by example internationally by first ending child marriage here in Canada.

GRAN strongly recommends that the Civil Marriage Act, clause 2.2 be amended to read: « no person who is under the age of 18 may contract marriage

The adoption of a new federal legal minimum age of marriage of 18 respects the fundamental human rights of the child, girls and boys, and it strengthens the Government of Canada's credibility internationally on the issue of child marriage.

GRAN hopes that measures to end child marriage under 18 in Canada will receive unanimous support from the Government of Canada. This letter is also being sent to other relevant Ministers and the members of the Standing Committee on Citizenship and Immigration.

Yours sincerely,



s.19(1)

The Grandmothers Advocacy Network

¹ GRAN is a multi partisan network of volunteers across Canada, advocating for the human rights of grandmothers, vulnerable children and youth in Sub-Saharan Africa. Child, early and forced marriage is recognized worldwide as a harmful practice that violates human rights and has a disproportionately negative impact on women and girls. It has been a focus of GRAN's action for two years.

Email: grandmothersadvocacy@gmail.com * Website: grandmothersadvocacy.org

MINISTER OF JUSTICE
MINISTRE DE LA JUSTICE

Minister of
Foreign Affairs



Ottawa, Canada K1A 0G2

Ministre des
Affaires étrangères

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e/w DIS-005732

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MAY 25 2015

[REDACTED]
Grandmothers Advocacy Network

s.19(1)

Dear [REDACTED]

Thank you for your email of April 14, 2015, with which you attached a letter regarding the amendment to the *Civil Marriage Act*.

I appreciate the time you have taken to share your concerns on this important matter with me. However, the issue you raise falls under the responsibility of the Honourable Peter G. MacKay, Minister of Justice and Attorney General of Canada. I have, therefore, taken the liberty of forwarding a copy of your correspondence to him for consideration.

Thank you for writing.

Yours truly,

[REDACTED]
The Honourable Rob Nicholson, P.C., Q.C., M.P.
Minister of Foreign Affairs

c.c. The Honourable Peter G. MacKay, P.C., Q.C., M.P.

Canada

Refer to Justice

Miles, Julia -DCC

From: Nicholson, Robert Douglas - M.P. <rob.nicholson@parl.gc.ca>
Sent: April-14-15 1:26 PM
To: MIN Dfaitmaeci-A10 -MINA
Subject: FW: Grandmothers Advocacy Network (GRAN) re S-7
Attachments: GRAN letter re S-7 RN.docx

(m)
DCC

FYI

A04119-2015

Executive Assistant to the Honourable Rob Nicholson M.P. / Adjointe de direction l'hon. Rob Nicholson, député
Minister of Foreign Affairs / Ministre des Affaires étrangères
515 S Centre Block / 515 S, édifice du Centre
House of Commons / Chambre des communes
613-995-1547

Rob.Nicholson@parl.gc.ca

s.19(1)

From: [REDACTED]
Sent: Tuesday, April 14, 2015 1:15 PM
To: Nicholson, Robert Douglas - M.P.
Subject: Grandmothers Advocacy Network (GRAN) re S-7

Dear Minister Nicholson,

On behalf of the Grandmothers Advocacy Network, I am attaching a letter to you regarding GRAN's concerns about S-7, the Amendment to the Civil Marriage Act that sets the age for legal marriage in Canada at 16 rather than the age of 18 that Canada advocates internationally.

A hard copy of this letter is also sent to you. We look forward to hearing from you.

With our thanks,

[REDACTED]
Grandmothers Advocacy Network (GRAN)

MINAIR APR 14 2015

grandmothers
Advocacy Network



Mouvement de soutien des
grands-mères

Advocating for grandmothers, vulnerable children and youth in sub-Saharan Africa

April 12, 2015

The Honourable Rob Nicholson, P.C., M.P.
Minister of Foreign Affairs
House of Commons
Ottawa, ON K1A 0A6

Dear Minister:

GRAN¹ wrote to Minister Baird in October 2013 to express our agreement with the Government of Canada on the announced UN resolution to end child, early and forced marriage. At a meeting on May 23, 2014 between members of GRAN and Minister Baird and assistants, our support was reaffirmed.

We must now write to you express our concerns regarding the amendment to the Civil Marriage Act, specifically, clause 2.2. This amendment, included within the proposed amendments to the Immigration Act, Civil Marriage Act and Criminal Code currently before the House, is problematic because it:

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Canada is expected to lead by example internationally by first ending child marriage here in Canada.


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GRAN hopes that measures to end child marriage under 18 in Canada will receive unanimous support from the Government of Canada. This letter is also being sent to other relevant Ministers and the members of the Standing Committee on Citizenship and Immigration.

Yours sincerely,

s.19(1)



The Grandmothers Advocacy Network

¹ GRAN is a multi partisan network of volunteers across Canada, advocating for the human rights of grandmothers, vulnerable children and youth in Sub-Saharan Africa. Child, early and forced marriage is recognized worldwide as a harmful practice that violates human rights and has a disproportionately negative impact on women and girls. It has been a focus of GRAN's action for two years.

Email: grandmothersadvocacy@gmail.com * Website: grandmothersadvocacy.org

Carson, Derek

From: Carson, Derek
Sent: 2015-May-01 2:16 PM
Subject: Committee Reporting - Citizenship and Immigration - Bill S-7 (ZTBCP) - April 30, 2015
Attachments: CIMM_Committee Report_final_Apr30.docx; CIMMBLUES-45.pdf

Good afternoon,

Please find attached the report, prepared by our colleagues at Citizenship and Immigration, on the meeting of the Citizenship and Immigration Committee on April 30, 2015, regarding Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*.

The unofficial transcripts are also attached.

Overview of hearing

The Standing Committee on Citizenship and Immigration (CIMM) met for the third time today as it continued its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*) and heard from various stakeholders. The tone was cordial and the meeting adjourned early at 10:35 due to a vote in the House of Commons.

Opening Remarks

Ms. Fakhri supported the bill, stating barbaric cultural practices are done "in the name of freedom but at the expense of equality." She also spoke about how she believes that conditional PR and financial dependence on the sponsor "predispose women to violence", recommending that 1) an information booklet on women's rights be provided to sponsored applicants with mandatory review so that women are better informed and would not feel obligated to remain in an abusive relationship, and 2) language classes for sponsored women post-arrival be made mandatory to help them become more independent. **Mr. Kurland** stated that the bill sends a "signal to what will not be tolerated in Canada" and drew the Committee's attention to a CBSA intelligence report that alerts embassies globally about the "trend of mut'a" (short-term marriage of women purchased by wealthy Muslim men from the Middle East and South Africa as well as southern India for personal fulfillment)", which could be a factor in marriage fraud. He also noted that CBSA may be willing to provide additional information on this topic.

In the second panel, **Mr. Spratt** stated his opposition to the bill, asserting that it "goes too far and is too broad" with respect to defense of provocation, and that expecting a 14-year old girl would lay a peace bond against her family is "ridiculous". He also referred to statements made by the Minister before Committee regarding the bill as being inaccurate and misleading (i.e. comments likening provocation to premeditated murder; statement that measures in the bill would amend the *Criminal Code* in that legal conduct by a victim cannot legally be considered provocation; honour killings meet the criteria of provocation defense; comment that anyone charged with murder could raise the defence of provocation in seeking to reduce the lesser charge of manslaughter; statement that provocation defence has been raised in several so-called honour killings across Canada when only three cases were cited). As an advocate for victims of domestic violence, **Ms. Dhillon** related her own experience of being abused for over a decade. Whereas she felt the bill is a "good start", and that "taking small steps is better than not doing anything at all", she asked "How do we protect girls and victims over the age of 16 and what do we mean when we say zero tolerance? Are we saying probation or are we saying jail term? What about repeat offenders?" Based on her doctorate thesis on forced marriages in Quebec, **Ms. Lamboley** asserted that criminalization of forced marriage is not the solution due to lack of agreement on a common definition and lack of valid data indicating the true scope of the issue. She suggested alternate approaches (i.e. implementing human trafficking protocol; adding forced marriage as an aggravating factor for violence; increasing the legal minimum age for marriage to 18; requiring a civil marriage take place before a religious one as in France; having a national action plan that harmonizes the work of various stakeholders, as well as focus on collecting information to address the issue.

Members' questions focused on the impact of the bill on women in abusive marriages and what can be done to improve equality and financial independence, definition of polygamy and forced marriage, scope and application of defense of provocation, increasing awareness of Canadian values among affected women, and alternate approaches to criminalizing forced marriage.

Next Meeting:

The Committee will next meet on May 5, 2015 to hear from stakeholders as it continues its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*).

Thank you,

Derek Carson

Analyst | Analyste

Cabinet and Parliamentary Affairs Unit | Unité des affaires du Cabinet et parlementaires

Department of Justice Canada | Ministère de la Justice Canada

284 Wellington Street, EMB - 4206 | 284 rue Wellington, ÉCE - 4206

Ottawa (Ontario) K1A 0H8

tel. | tél.: (613) 219-1880

derek.carson@justice.gc.ca

Government of Canada | Gouvernement du Canada

REPORT ON COMMITTEE HEARINGS

Name of committee: Standing Committee on Citizenship and Immigration (CIMM)
Report prepared by: Tammy Bokhari, Parliamentary Affairs, 613-437-9099
Date and time: Thursday, April 30, 2015, 8:45 a.m. to 10:35 a.m.
Location: Room 253-D, Centre Block

Witnesses

8:55-9:45 a.m.

As individuals

Laila Fakhri

Richard Kurland, Lawyer and Policy Analyst

9:45-10:35 a.m.

As individuals

Kamal Dhillon, Author, Black and Blue Sari

Madeline Lamboley, Ph.D. candidate in criminology

J. Michael Spratt, Criminal lawyer, Abergel Goldstein and Partners

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Highlights of questions by committee members

NDP

Citizenship and Immigration Critic Lysane Blanchette-Lamothe asked what could be done to **improve women's equality and financial independence**. Ms. Fakhri recommended giving women waiting to be sponsored to Canada an information booklet in their own language to study and then be interviewed before coming to Canada; showing women in abusive relationships in Canada step-by-step how to set up a bank account; and mandating meetings with settlement workers for two years post-arrival without the presence of the husband. When asked whether **women should be encouraged to speak out**, Ms. Fakhri spoke about the need to give women courage as they face family pressures, fear of deportation and financial as well as language barriers. When asked **what helped Ms. Dhillon to speak up and how the Bill could have helped her**, Ms. Dhillon spoke about not wanting to have the cycle of violence repeated with her four children, and if she had known about her rights, it would have given her hope. When asked to **elaborate on additional solutions to the issue of forced marriage**, Ms. Lamboley reiterated the need for a holistic approach to a National Action Plan and formal protocol against forced marriages, along with the need for increased funding to organizations that help victims. Regarding **whether the bill will worsen stigmatization and victimization for affected women**, Ms. Lamboley agreed and stressed the importance of educating women about their rights in their language of origin. Regarding considering **forced marriage as an aggravating factor** rather than criminalizing it, Ms. Lamboley stated that whereas criminalization would send a clear message, it wouldn't stop it from happening.

When asked by **Irene Mathysen** to comment on whether witnesses had heard of **fears from women who could be deported and the impact on children and reaction from family members**, Ms. Fakhri stated that women who know about their rights act differently than those who do not, noting that many women do fear deportation from not knowing their rights and risk being marginalized by extended family members. In response to a question on whether the **conditional PR should be eliminated**, Ms. Fakhri suggested an alternate approach that would make life easier for women would be better. When asked to comment on whether **safe, affordable housing is needed for women**, Ms. Fakhri pointed out that many women decide to stay in abusive situations because shelters offer 6-8 weeks of accommodation at best and there is

a huge waiting list for adequate housing, even if stressed as being a priority.

Liberal

Citizenship and Immigration Critic John McCallum asked whether it would be beneficial to **include a clear definition of polygamy in the bill for enforcement of deportation**. Mr. Kurland noted that with electronic Travel Authorization (eTA), those that indicate more than one spouse would be queued for further review; that said, he suggested the government could add a template to the eTA application that would allow prospective travelers to overcome an inadmissibility to enter Canada with a temporary resident permit (TRP) at a cost of \$400. He also acknowledged there is a potential weakness in the bill as it is not clear whether the provision for deportation due to polygamy would apply retroactively. When asked to comment on whether it would be better to **remove the provision related to provocation defense** from the bill or to **add a specific list of more violent crimes** for further clarity, Mr. Kurland noted adding a list of specific crimes would be beneficial. Mr. Spratt asserted that comments made during the March 23, 2015 debate on the bill in the House that other jurisdictions have removed provocation defense from their common law is untrue, citing UK as an example, where it was replaced with loss of control in specified circumstances. When asked if the bill needs to be amended, he suggested it wasn't necessary though there could be a provision to the effect "Despite the foregoing, provocation shall not be raised or considered where a judge rules that the killing was motivated by honour or culture, or infidelity." Rather than "needlessly adding sections to the already overburdened Criminal Code" however, he suggested it would be better to ensure state-funded representation for those who bring a peace bond against a family member, or increase the number of judges or courts so peace bonds could be head more expeditiously.

CPC

When asked by **Parliamentary Secretary for Citizenship and Immigration Costas Menegakis** what **other governments are doing worldwide to address child marriages**, Mr. Kurland noted that this bill would be a signal to other countries, particularly Western European ones such as France, on Canada taking initiative and being seen as a role model. When asked whether **practices addressed by the bill are barbaric and should be criminalized**, Ms. Fakhri agreed, noting it's important to send a clear message on what Canada's value is when it comes to women's rights and equality, even if it sounds harsh.

When asked by **Parliamentary Secretary for Multiculturalism Chungsen Leung** whether the bill provides **tools to frontline workers** (immigration officers abroad, CBSA officers at ports of entry, domestic law enforcers, RCMP) to **address the issue of forced and child marriages**, Mr. Kurland noted that it provides more avenues for collecting information from stakeholders concerned with violence against women and providing it to those involved in enforcement. That said, he also noted that "we may need to move pieces on the settlement board" to collect information about and help women who are isolated. When asked to comment on how the government can **access and educate women in culturally close-knit families**, Ms. Fakhri suggested that in addition to providing a booklet in their language of origin pre-arrival and mandatory language classes post-arrival, there should be an agreement with the sponsor that the sponsored spouse would have to meet regularly with a settlement worker post-arrival. Mr. Kurland suggested that access to information issue could easily be addressed by requiring as part of the sponsorship obligation guaranteed access to a laptop so that a settlement worker or sponsorship group could provide training on how to use the Internet.

When asked by **David Tilson** why there is **only an age limit for having an offence of forcing someone into a marriage abroad** in the bill, Mr. Kurland clarified that it wouldn't be necessary to enforce the intent as proposed in the bill by having a minimum marriage age when the minimum marriage age is evident in provincial statutes.

Devinder Shory asked witnesses to comment on the potential abuse of the immigration system with the application of **mut'a being practiced in Canada**. Mr. Kurland suggested it may be interesting to know if the redacted portions of the CBSA intelligence report (a copy was provided to the Committee) pinpoint the practice connected to Canadians or PRs, given it is on a watchlist for marriages of convenience. When asked to comment on law enforcement and the **use of peace bonds** against anyone who may assist in a forced or underage marriage, Mr. Kurland stated that the peace bond "is an additional tool in the arsenal that will protect Canadians and PRs." When asked about **the need for the bill and if certain cultural practices should be condemned**, Ms. Dhillon agreed, noting she would like to see stiffer sentences and that more can be done for victims over 18. When asked **how awareness about the bill could be increased in protecting Canadian values and those at risk for abuse**, Ms. Dhillon stated that speaking about it in high schools and ensuring agencies and advocates speak about it is important. At the same time, she wondered what law would protect those taken to India for a forced marriage when they are there.

When asked by **Jim Eglinski** whether it is fair that **honour-based issues be perceived and tried using the defense of provocation**, Mr. Kurland emphasized that "it's the right legislative effort that will take away a possible defence from an individual who ought to be incarcerated." When asked to comment on **how to deal with people who have the mindset they are justified to commit a barbaric act**, Mr. Kurland noted that the bill addresses a particular outcome in the appropriate way. In response to a question about the **appropriateness of the wording of the bill title**, Ms. Fakhri agreed that the title sends a clear message on an issue that needs to be addressed.

Next Meeting: The Committee will next meet on May 5, 2015 to hear from stakeholders as it continues its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*).

Carson, Derek

From: Carson, Derek
Sent: 2015-May-06 3:58 PM
To: Nesbitt, Scott
Cc: Lafleur, Eric; Assad, Michael; Legault, Yanike
Subject: FW: Request for materials: Bill S-7 (ZTBCP) - Response to Amendments
Attachments: S-7 - LPC amendments - DOJ.pdf; S-7 - CIMM Amendment Chart - DOJ.docx

Hi Scott,

Amendments to Bill S-7 have started to come from the Opposition parties at the Citizenship and Immigration Committee.

Citizenship and Immigration Canada has asked that we provide our input on the attached amendments (two from Mr. McCallum) by Friday at 1:00 p.m. (MO-approved).

We've asked SADMO that the responses be sent to us tomorrow afternoon to give time for you to review them before submitting to MO for their approval.

Please let me know if you have any questions or concerns.

Thanks very much,

-Derek

From: Carson, Derek
Sent: 2015-May-06 3:55 PM
To: * SADMO/Admin; * CLP SGC/Office
Cc: Hitch, Lisa; Blackell, Gillian; Klineberg, Joanne; * CPAU Group
Subject: Request for materials: Bill S-7 (ZTBCP) - Response to Amendments

Good afternoon,

CIC has asked that Justice officials input into the responses for the Liberal amendments to Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*.

Please see attached.

CIC has asked that they be sent the responses, approved by our Minister's office, by Friday, May 8 at 1:00 p.m.

As such, to make that deadline, we would need the responses sent to CPAU tomorrow afternoon.

Further amendments will likely follow leading up to clause-by-clause, scheduled for Tuesday, May 12 at 8:45 a.m.

As we receive them, we will forward them on to you for input/review/analyses.

Please let me know if you have any questions or concerns.

Thanks very much,

Derek Carson

Analyst | Analyste

Cabinet and Parliamentary Affairs Unit | Unité des affaires du Cabinet et parlementaires

Department of Justice Canada | Ministère de la Justice Canada

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Ref.: 7953899

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S-7

Ref.: 7953899

Clause/Article 7

Page 3

Page 3

COMMITTEE STAGE

May 4, 2015

Mr. McCallum (Markham—Unionville)

ÉTAPE DU COMITÉ

4 mai 2015

M. McCallum (Markham—Unionville)

That Bill S-7, in Clause 7, be amended

Que le projet de loi S-7, à l'article 7, soit
modifié :

(a) by replacing lines 12 to 14 on page 3
with the following:

a) par substitution, aux lignes 16 et 17,
page 3, de ce qui suit :

"stitute an indictable offence under this
Act or discrimination on a prohibited
ground of discrimination within the
meaning of the *Canadian Human Rights
Act* and that is of such a nature as"

« ou un acte discriminatoire fondé sur un
motif de distinction illicite au sens de la
*Loi canadienne sur les droits de la
personne*, de telle nature qu'elle suffise à
priver une »

(b) by adding after line 19 on page 3 the
following:

b) par adjonction, après la ligne 22, page
3, de ce qui suit :

"(2.1) For greater certainty, the conduct
of the victim, in a case where the accused
believes that it has brought shame or
dishonour to his family, does not
constitute discrimination on a prohibited
ground of discrimination that would
amount to provocation under subsection
(2)."

« (2.1) Il est entendu que la conduite de la
victime, dans le cas où l'accusé croit
qu'elle a jeté la honte ou le déshonneur
sur sa famille, ne constitue pas un acte
discriminatoire fondé sur un motif de
distinction illicite qui équivaut à une
provocation au titre du paragraphe (2). »

Ref.: 7903187

Page 1 of 2

S-7

Ref.: 7903187

Clause/Article 4

Page 2

Page 2

COMMITTEE STAGE

March 27, 2015

Mr. McCallum (Markham—Unionville)

ÉTAPE DU COMITÉ

27 mars 2015

M. McCallum (Markham—Unionville)

That Bill S-7, in Clause 4, be amended by replacing lines 6 and 7 on page 2 with the following:

Que le projet de loi S-7, à l'article 4, soit modifié par substitution, aux lignes 7 et 8, page 2, de ce qui suit :

"2.2 (1) No person who is under the age of 18 years may contract marriage.

« 2.2 (1) Nul ne peut contracter mariage avant d'avoir atteint l'âge de dix-huit ans.

(2) Despite subsection (1), the Governor in Council may, by regulation, at the request of the lieutenant governor in council of a province, prescribe, in respect of the province, that the minimum age to contract marriage is 16 or 17, as the case may be, if the province has legislative measures providing for a judicial process by which a person who is 16 or 17, as the case may be, may seek an order to declare that he or she has the capacity to contract marriage."

(2) Malgré le paragraphe (1), le gouverneur en conseil peut, par règlement, à la demande du lieutenant-gouverneur en conseil d'une province, fixer, pour cette dernière, l'âge minimum du mariage à seize ou à dix sept ans, à la condition que celle-ci ait adopté des mesures législatives qui permettent à une personne âgée de seize ou de dix sept ans, selon le cas, de demander à un tribunal de déclarer qu'elle a capacité de contracter mariage. »

Member's SIGNATURE du député

31/03/2015 13:19:17

Pages 837 to / à 838
are withheld pursuant to section
sont retenues en vertu de l'article

23

of the Access to Information Act
de la Loi sur l'accès à l'information

Carson, Derek

From: Carson, Derek
Sent: 2015-May-06 2:07 PM
Subject: RE: Committee Reporting - Citizenship and Immigration - Bill S-7 (ZTBCP) - May 5, 2015
Attachments: CIMMBLUES-46.pdf

Good afternoon,

Please find attached the Blues from yesterday's Committee meeting on Bill S-7.

Thanks!

-Derek

From: Carson, Derek
Sent: 2015-May-05 5:14 PM
Subject: Committee Reporting - Citizenship and Immigration - Bill S-7 (ZTBCP) - May 5, 2015

Good evening,

Please find attached the report, prepared by our colleagues at Citizenship and Immigration, on this morning's meeting of the Citizenship and Immigration Committee, regarding Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*.

Overview of hearing

The Standing Committee on Citizenship and Immigration (CIMM) met for the fourth time as it continued its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*) and heard from various stakeholders.

Opening Remarks

Ms. Fabricius supported the bill in terms of taking a strong stance against forced and underage marriages, but also stressed the importance of combining legislation with increasing awareness, empowering young women and children, and ensuring that they have an extended support system that protects them. She noted that to date there have been no forced marriage cases brought to court in Denmark since legislation was introduced to address this issue. **Ms. Go** spoke against the bill, expressing concerns that deportation resulting from polygamy would include the very women the bill claims to protect; criminalizing forced marriage will only drive it underground instead of stopping it; conditional PR will put sponsored spouses in abusive relationships at risk; the short title invokes racist stereotypes and xenophobia against certain communities; and the bill detracts Canadians from having a real, honest discussion about gender equality by focusing on cultural identity instead. She recommended that the Government:

- repeal conditional PR;
- grant PR to non-status women who are victims of violence;
- provide necessary social support for affected women (e.g. housing, counseling)
- increase funding for immigrant settlement sector
- enhance employment opportunities for immigrant women through employment equity measures, training and other support programs.

Ms. Raza spoke in support of the bill, noting that men can also be victims of honour-based killings, and provided a copy of the film "Honour Diaries" to the Committee. She also stressed the importance of raising awareness about barbaric cultural practices, particularly in the law enforcement, judicial and medical professional communities, as well as the need for reliable data on forced marriages and female genital mutilation. She suggested that the minimum age for marriage should be raised to 18, and that the bill leaves women over the age of 18 unprotected from forced marriage. She recommended that a Distress line for honour-based violence related to forced marriages arranged outside Canadian

borders would be helpful, and spoke about the UK's Forced Marriage Unit. She also noted that the bill did not address the issue of restricting "bride price" or dowry, another common issue related to domestic violence.

In the second panel, as a local radio show host of "Canada Zindabad" in Toronto that raises awareness of *Charter* values in the South Asian community, **Ms. Shahida** supported the intent of the bill, noting that in her experience, the biggest factor facing those affected is a desperate feeling of hopelessness. **Ms. Douglas** strongly opposed the bill, stating that using immigration law in addition to the *Criminal Code* is a double punishment. She agreed with Ms. Go's concerns and recommendations, adding that 1) the bill should be withdrawn and 2) the Government should invest in a National Action Plan to help change attitudes to prevent violence against women (citing Ontario's Action Plan for Protection for Women Against Violence as worth considering). **Ms. Costom** expressed concerns about the short title of the bill (as being divisive and misleading), revocation of the partial defense of provocation (even though it has never been used as pointed out in previous testimony by Department of Justice official Joanne Klineberg), potential impact of the bill (i.e. need for broad-based consultations that didn't happen), and enforceability of the bill (i.e. will require lots of evidence and add complexity to legal proceedings that are already quite complex). **Mr. Edelmänn** pointed out that the provision related to polygamy in Section 293 of the *Criminal Code* does not apply the way the bill is trying to apply it, noting that it is unclear what practicing polygamy is in Canada, as well as unclear how rendering women inadmissible due to polygamy would help protect women.

Members' questions focused on the impact of criminalizing forced marriage, challenge of defining polygamy, unintended consequences of deportation on women and children, providing law enforcement with necessary tools to criminalize and help prevent honour-based violence, as well as need to raise awareness and educate men, women and children about Canadian values and human rights.

Next Meeting:

The Committee will next meet on May 7, 2015 to hear from stakeholders as it continues its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*), followed by clause-by-clause consideration on May 12, 2015.

Thank you,

Derek Carson

Analyst | Analyste

Cabinet and Parliamentary Affairs Unit | Unité des affaires du Cabinet et parlementaires

Department of Justice Canada | Ministère de la Justice Canada

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REPORT ON COMMITTEE HEARINGS

Name of committee: Standing Committee on Citizenship and Immigration (CIMM)
Report prepared by: Tammy Bokhari, Parliamentary Affairs, 613-437-9099
Date and time: Tuesday, May 5, 2015, 8:45 a.m. to 10:45 a.m.
Location: Room 268, The Valour Building, 151 Sparks St.

Witnesses

8:55-9:45 a.m.

Raheel Raza, President, Council for Muslims Facing Tomorrow

Avvy Go, Clinic Director, Metro Toronto Chinese and Southeast Asian Legal Clinic

As an individual (via videoconference – Copenhagen, Denmark)

Susanne Willaume Fabricius

9:45-10:45 a.m.

Peter Edelmann, Executive Member, Immigration Law Section, Canadian Bar Association

Suzanne Costom, Vice-Chair, Criminal Justice Section, Canadian Bar Association

Debbie Douglas, Executive Director, Ontario Council of Agencies Serving Immigrants (OCASI)

As an individual

Arooj Shahida

Overview of hearing

The Standing Committee on Citizenship and Immigration (CIMM) met for the fourth time as it continued its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*) and heard from various stakeholders.

Opening Remarks

Ms. Fabricius supported the bill in terms of taking a strong stance against forced and underage marriages, but also stressed the importance of combining legislation with increasing awareness, empowering young women and children, and ensuring that they have an extended support system that protects them. She noted that to date there have been no forced marriage cases brought to court in Denmark since legislation was introduced to address this issue. **Ms. Go** spoke against the bill, expressing concerns that deportation resulting from polygamy would include the very women the bill claims to protect; criminalizing forced marriage will only drive it underground instead of stopping it; conditional PR will put sponsored spouses in abusive relationships at risk; the short title invokes racist stereotypes and xenophobia against certain communities; and the bill detracts Canadians from having a real, honest discussion about gender equality by focusing on cultural identity instead. She recommended that the Government:

- repeal conditional PR;
- grant PR to non-status women who are victims of violence;
- provide necessary social support for affected women (e.g. housing, counseling)
- increase funding for immigrant settlement sector
- enhance employment opportunities for immigrant women through employment equity measures, training and other support programs.

Ms. Raza spoke in support of the bill, noting that men can also be victims of honour-based killings, and provided a copy of the film "Honour Diaries" to the Committee. She also stressed the importance of raising awareness about barbaric cultural practices, particularly in the law enforcement, judicial and medical professional communities, as well as the need for reliable data on forced marriages and female genital mutilation. She suggested that the minimum age for marriage should be raised to 18, and that the bill leaves women over the age of 18 unprotected

from forced marriage. She recommended that a Distress line for honour-based violence related to forced marriages arranged outside Canadian borders would be helpful, and spoke about the UK's Forced Marriage Unit. She also noted that the bill did not address the issue of restricting "bride price" or dowry, another common issue related to domestic violence.

In the second panel, as a local radio show host of "Canada Zindabad" in Toronto that raises awareness of *Charter* values in the South Asian community, **Ms. Shahida** supported the intent of the bill, noting that in her experience, the biggest factor facing those affected is a desperate feeling of hopelessness. **Ms. Douglas** strongly opposed the bill, stating that using immigration law in addition to the *Criminal Code* is a double punishment. She agreed with Ms. Go's concerns and recommendations, adding that 1) the bill should be withdrawn and 2) the Government should invest in a National Action Plan to help change attitudes to prevent violence against women (citing Ontario's Action Plan for Protection for Women Against Violence as worth considering). **Ms. Costom** expressed concerns about the short title of the bill (as being divisive and misleading), revocation of the partial defense of provocation (even though it has never been used as pointed out in previous testimony by Department of Justice official Joanne Klineberg), potential impact of the bill (i.e. need for broad-based consultations that didn't happen), and enforceability of the bill (i.e. will require lots of evidence and add complexity to legal proceedings that are already quite complex). **Mr. Edelmann** pointed out that the provision related to polygamy in Section 293 of the *Criminal Code* does not apply the way the bill is trying to apply it, noting that it is unclear what practicing polygamy is in Canada, as well as unclear how rendering women inadmissible due to polygamy would help protect women.

Members' questions focused on the impact of criminalizing forced marriage, challenge of defining polygamy, unintended consequences of deportation on women and children, providing law enforcement with necessary tools to criminalize and help prevent honour-based violence, as well as need to raise awareness and educate men, women and children about Canadian values and human rights.

Highlights of questions by committee members

NDP

When asked by **Citizenship and Immigration Critic Lysane Blanchette-Lamothé** to comment on **whether measures taken to criminalize forced marriage in Denmark six years ago have been effective**, **Ms. Fabricius** reiterated that no cases have gone to court yet as even victims who report initially later retract their statements due to strong family ties. When asked **whether criminalizing forced marriage would lead to even more silence and if the bill is the best way to send a strong message when forced marriage and polygamy are already banned in Canada**, **Ms. Fabricius** noted that having appropriate laws as well as adequate support system are needed, as increasing awareness at different levels of society takes a long time. In response to a question about **whether there are any measures in the bill that help to eradicate female genital mutilation**, **Mr. Edelmann** replied that the bill does not add to or change any laws that already exist prohibiting this practice. When asked to **comment on additional discretionary powers for immigration officers to determine if there is polygamy**, **Mr. Edelmann** noted that the greater issue of concern was that the bill's interpretation of Section 293 of the *Criminal Code* would differ from the only interpretation before the courts in term of the decision by Judge Bowman, where he considered polygamy in terms of polygyny, polyandry and polyamory. In terms of **possible amendments** to the bill, **Mr. Edelmann** suggested that a more precise definition of polygamy in terms of abusive polygyny could be added to IRPA as defining it

further in the *Criminal Code* could be problematic. Regarding **whether the bill provides tools to help deter forced marriages and honour-based killings**, Ms. Costom noted that the use of peace bonds already exists in the *Criminal Code*, though not addressed specifically in the brief provided to the Committee.

When asked by **Irene Mathysen** why there still appears to be a **lack of awareness in the medical profession about female genital mutilation**, Ms. Raza explained this is in large part due to the practice happening behind closed doors by grandmothers, midwives and/or doctors who are not forthcoming. In response to a question **whether there is enough in the latest Budget to promote awareness and understanding of violence**, Ms. Go stated that a better signal by the Government would be to spend money on combating all kinds of violence against women and addressing all polygamous relationships, including those who are allowed to come to Canada as the mistresses of rich Chinese and Hong Kong businessmen because they have the money to do so. When asked **whether criminalization would make people scared and drive practices underground**, Ms. Go agreed, noting that the fact we're still having the debate speaks to the volume of the lack of effectiveness of this kind of measure. When asked **whether sending a family back to the country of origin in the best interest of women and children**, Ms. Go disagreed, noting the practice is happening even now in cases where the women and children who are victims of violence are being deported when the sponsorship is withdrawn by the sponsor. When asked **whether the bill is a legal or political document**, Ms. Costom noted that it does not seem to address a legal problem. Regarding the **best way to end violence against women and impacted missing and murdered aboriginal women**, Ms. Douglas noted that the ongoing call for a public inquiry to examine the root causes speaks to the purpose of a bill like S-7. She also stressed the importance of having services in place, educating men and women about women's rights, addressing the issue of patriarchy, irrespective of cultural group, and ensuring adequate housing, entrepreneurial supports, labour market participation supports, and childcare. When asked **whether we should be concerned about approaching the issue of domestic violence through the lens of immigration and criminal law**, Ms. Douglas criticized creating "a double jeopardy situation" where immigrants would be punished once in terms of a violation of the *Criminal Code*, and then deported according to IRPA, stating that violence against women should be approached through criminal law.

Liberal

Citizenship and Immigration Critic John McCallum asked whether there were any **unintended consequences if polygamists are deported, how this has been dealt with in Denmark, and whether they should be deported**. Ms. Fabricius stressed that it can be very dangerous for women who are deported as they can face violence/death in their country of origin and the husband usually gets custody of the children. She added that her work involves writing authorities to prevent women from being deported and helping women to stay in Denmark, particularly if subject to physical violence. In response to a question **whether the bill should be passed or amended**, Ms. Go acknowledged the merit of bill provisions banning child marriage and raising the minimum age of consent, but still felt more could be done to help victims such as increasing funding for programs that help women and guaranteeing that they can stay in Canada. Regarding **whether the bill should be withdrawn**, Ms. Costom noted that in the area of provocation, wholesale change to substantive criminal law should not be done in a piecemeal fashion without appropriate consultation and thought to collateral consequences. Regarding **whether better to add a more precise definition of polygamy in the bill or not deport people at all**, Mr. Edelmann suggested a more precise definition with reference to whether it is exploitation would be useful, as the Section 293 definition in the *Criminal Code* is much broader

than what is being targeted in the bill, and the interpretation that is being given in the bill is not the same as the one that is being used in the criminal courts.

CPC

When asked by **Parliamentary Secretary for Citizenship and Immigration Costas Menegakis to elaborate on the film "Honour Diaries"**, Ms. Raza explained that it is a call to action by nine female activists featured in the film to break the silence about honor-based violence. In response to a question about **meeting victims that this bill would protect**, Ms. Raza noted that she had met several and that the film screening has helped women to speak out. When asked to comment on **whether child marriages should be prohibited by law**, Ms. Raza noted that whereas the law may not eliminate forced and underage marriage, which is the worst form of child abuse, it would act as a deterrent. **Ms. Fabricius** agreed, also noting the importance of society to help victims as well, such as by encouraging people to report abuse to the police. Regarding **whether the bill gives an additional tool to law enforcement to assist them in apprehending those who are perpetrating forced and early marriages**, Ms. Shahida noted that it could help to prevent many people from becoming victims and punishing those who commit these crimes.

When asked by **Parliamentary Secretary for Multiculturalism Chungsen Leung to comment on how to reach out to victims and potential victims in close-knit communities**, Ms. Raza suggested the use of public service announcements and brochures as done in the UK, stressing they be in a language they will understand. When asked to **elaborate on what different groups are saying about the bill and whether there was any experience working with victims from European, Judeo-Christian or East Asian backgrounds**, Ms. Raza pointed out that honour-based violence is primarily prevalent in South Asian communities due to pressures from faith, patriarchy and lower levels of literacy in cases where women do not know their rights.

Jay Aspin asked how the bill will protect Canadian values and convey that barbaric cultural practices are not welcome in Canada. Ms. Raza stressed that the bill will send a strong message about gender equality, freedom of thought, choice and voice, which are all Canadian values. When asked **if forced marriage takes place on Canadian soil or if families typically take girls out of the country**, Ms. Raza noted both take place, though typically the latter. She stressed the need for social workers, teachers and medical professionals to question when girls are taken out of school for prolonged periods of time and forced to stay at home or taken abroad. In response to a question about **how the bill would prevent young girls from being taken out of Canadian soil for a forced marriage abroad**, Ms. Raza reiterated that it would act as a deterrent. When asked **if the bill will give front line workers better tools to criminalize and even prevent honour-based violence, and whether training of officers is needed**, Ms. Raza agreed, stating that being aware of the triggers of honour-based violence through training and education will better equip them to deal with these cases. Regarding **how adding "free and enlightened consent" wording to the Civil Marriage Act further protects victims of forced marriages**, Ms. Shahida noted that it would help to prevent some cases by warning family members thinking of perpetrating a forced marriage to think again. Regarding **whether the minimum marriage age should be codified at 16**, Ms. Shahida asserted that it should be 18. When asked **whether the bill title was appropriate**, Ms. Shahida agreed that even if such practices happen to one child, one girl or one person, it is barbaric. Regarding **how important it is for immigrants to understand that certain values are not welcome in Canada**, Ms. Shahida noted every immigrant should know what is acceptable in Canada before they are granted immigrant status.

When asked about **training for front line workers** by **Jim Eglinski**, **Ms. Shahida** noted that training is not only necessary for police officers to help understand and deal with the mindset underlying honour-based violence, but also for communities through their own community leaders and especially youth who were born and raised in Canada and understand the value of an individual's rights and freedoms. In response to a question about **how the government will know a crime has taken place when a 12 year old is taken outside of Canada to get married by the family who returns to Canada without her**, **Ms. Shahida** noted that since communities may not speak up, it's important to educate children on how to protect themselves and trust those who can provide protection (teachers, law enforcement officers).

Next Meeting: The Committee will next meet on May 7, 2015 to hear from stakeholders as it continues its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*), followed by clause-by-clause consideration on May 12, 2015.

Carson, Derek

From: Nesbitt, Scott
Sent: 2015-May-08 1:00 PM
To: Carson, Derek
Subject: S-7 s.23

 Thanks.

Scott Nesbitt
Counsel / Avocat


Office of the Deputy Minister of Justice and Deputy Attorney General of Canada
Bureau du sous-ministre de la Justice et sous-procureur général du Canada
East Memorial Building, Room 4089
284 Wellington Street, Ottawa, Ontario, K1A 0H8

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Carson, Derek

From: 
Sent: 2015-May-08 4:47 PM s.19(1)
To: Carson, Derek
Subject: CIMM S-7 - amendments / amendements
Attachments: S-7 amdt package - Liasse d'amendements.pdf.pdf

S-7

PV-1

Ref.: 7964220

Clause/Article 2

Page 1

Page 1

COMMITTEE STAGE

May 6, 2015

Ms. May (Saanich—Gulf Islands)

ÉTAPE DU COMITÉ

6 mai 2015

Mme May (Saanich—Gulf Islands)

That Bill S-7, in Clause 2, be amended by replacing lines 17 and 18 on page 1 with the following:

“consistent with subparagraph 293(1)(a)(ii) of the *Criminal Code* and shall not be interpreted so as to include a person who is in any kind of conjugal union with another person that is in any kind of conjugal union with more than one person at the same time.”

Que le projet de loi S-7, à l'article 2, soit modifié par substitution, à la ligne 17, page 1, de ce qui suit :

« tible avec le sous-alinéa 293(1)a)(ii) du *Code criminel*, mais elle ne s'interprète pas de manière à viser la personne qui est dans une sorte d'union conjugale avec une autre personne qui est dans une sorte d'union conjugale avec plus d'une personne à la fois.
»

S-7

NDP-2

Ref.: 7963708

Clause/Article 2

Page 1

Page 1

COMMITTEE STAGE

May 6, 2015

**Ms. Blanchette-Lamothe (Pierrefonds—
Dollard)**

ÉTAPE DU COMITÉ

6 mai 2015

**Mme Blanchette-Lamothe (Pierrefonds—
Dollard)**

That Bill S-7, in Clause 2, be amended by adding after line 18 on page 1 the following:

“(3) The Minister shall provide any foreign national sponsored under this Act by her spouse or common-law partner with all relevant information, in that foreign national's own language, on the rights of and the resources available to women in Canada.”

Que le projet de loi S-7, à l'article 2, soit modifié par adjonction, après la ligne 17, page 1, de ce qui suit :

« (3) Le ministre communique à toute étrangère parrainée par son époux ou conjoint de fait sous le régime de la présente loi, dans la langue de cette étrangère, tout renseignement pertinent relatif aux droits des femmes au Canada et aux ressources disponibles pour celles-ci. »

S-7

LIB-2

Ref.: 7903187

Clause/Article 4

Page 2

Page 2

COMMITTEE STAGE

March 27, 2015

Mr. McCallum (Markham—Unionville)

ÉTAPE DU COMITÉ

27 mars 2015

M. McCallum (Markham—Unionville)

That Bill S-7, in Clause 4, be amended by replacing lines 6 and 7 on page 2 with the following:

Que le projet de loi S-7, à l'article 4, soit modifié par substitution, aux lignes 7 et 8, page 2, de ce qui suit :

“2.2 (1) No person who is under the age of 18 years may contract marriage.

« 2.2 (1) Nul ne peut contracter mariage avant d'avoir atteint l'âge de dix-huit ans.

(2) Despite subsection (1), the Governor in Council may, by regulation, at the request of the lieutenant governor in council of a province, prescribe, in respect of the province, that the minimum age to contract marriage is 16 or 17, as the case may be, if the province has legislative measures providing for a judicial process by which a person who is 16 or 17, as the case may be, may seek an order to declare that he or she has the capacity to contract marriage.”

(2) Malgré le paragraphe (1), le gouverneur en conseil peut, par règlement, à la demande du lieutenant-gouverneur en conseil d'une province, fixer, pour cette dernière, l'âge minimum du mariage à seize ou à dix sept ans, à la condition que celle-ci ait adopté des mesures législatives qui permettent à une personne âgée de seize ou de dix sept ans, selon le cas, de demander à un tribunal de déclarer qu'elle a capacité de contracter mariage. »

S-7

PV-2

Ref.: 7954566

Clause/Article 4

Page 2

Page 2

COMMITTEE STAGE

May 4, 2015

Ms. May (Saanich—Gulf Islands)

ÉTAPE DU COMITÉ

4 mai 2015

Mme May (Saanich—Gulf Islands)

That Bill S-7, in Clause 4, be amended by
deleting lines 6 and 7 on page 2.

Que le projet de loi S-7, à l'article 4, soit
modifié par suppression des lignes 7 et 8, page
2.

S-7

PV-3

Ref.: 7954588

New Clause/Nouvel Article 4.1

Page 2

Page 2

COMMITTEE STAGE

May 4, 2015

Ms. May (Saanich—Gulf Islands)

ÉTAPE DU COMITÉ

4 mai 2015

Mme May (Saanich—Gulf Islands)

That Bill S-7 be amended by adding after line 11 on page 2 the following new clause:

Que le projet de loi S-7 soit modifié par adjonction, après la ligne 12, page 2, du nouvel article suivant :

“4.1 The Act is amended by adding the following after section 2.3:

« 4.1 La même loi est modifiée par adjonction, après l'article 2.3, de ce qui suit :

2.4 No person who is under the age of 16 years may contract marriage.”

2.4 Nul ne peut contracter mariage avant d'avoir atteint l'âge de seize ans. »

S-7

PV-4

Ref.: 7954615

New Clause/Nouvel Article 5.1

Page 2

Page 2

COMMITTEE STAGE

May 4, 2015

Ms. May (Saanich—Gulf Islands)

ÉTAPE DU COMITÉ

4 mai 2015

Mme May (Saanich—Gulf Islands)

That Bill S-7 be amended by adding after line 19 on page 2 the following new clause:

Que le projet de loi S-7 soit modifié par adjonction, après la ligne 21, page 2, du nouvel article suivant :

“COMING INTO FORCE

« ENTRÉE EN VIGUEUR

5.1 Section 4.1 comes into force on a day to be fixed by order of the Governor in Council, but the day that is fixed must not be before the day on which any committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for that purpose submit to the Senate, the House of Commons or both Houses of Parliament, as the case may be, a report respecting the proper minimum age for contracting a marriage under section 2.4 of the *Civil Marriage Act*, as enacted by that section 4.1.”

5.1 L'article 4.1 entre en vigueur à la date fixée par décret, laquelle ne peut être antérieure au dépôt au Sénat, à la Chambre des communes ou aux deux chambres, selon le cas, du rapport qu'établit le comité soit du Sénat, soit de la Chambre des communes, soit mixte, selon le cas, désigné ou constitué à cette fin sur l'âge minimal — prévu à l'article 2.4 de la *Loi sur le mariage civil*, édicté par cet article 4.1 — qu'une personne doit avoir pour contracter mariage. »

S-7

PV-5

Ref.: 7954238

Clause/Article 7

Page 3

Page 3

COMMITTEE STAGE

May 4, 2015

Ms. May (Saanich—Gulf Islands)

ÉTAPE DU COMITÉ

4 mai 2015

Mme May (Saanich—Gulf Islands)

That Bill S-7, in Clause 7, be amended by
deleting lines 9 to 19 on page 3.

Que le projet de loi S-7, à l'article 7, soit
modifié par suppression des lignes 12 à 22,
page 3.

S-7

LIB-3

Ref.: 7953899

Clause/Article 7

Page 3

Page 3

COMMITTEE STAGE

May 4, 2015

Mr. McCallum (Markham—Unionville)

ÉTAPE DU COMITÉ

4 mai 2015

M. McCallum (Markham—Unionville)

That Bill S-7, in Clause 7, be amended

Que le projet de loi S-7, à l'article 7, soit
modifié :

(a) by replacing lines 12 to 14 on page 3 with
the following:

a) par substitution, aux lignes 16 et 17, page 3,
de ce qui suit :

“stitute an indictable offence under this Act
or discrimination on a prohibited ground of
discrimination within the meaning of the
Canadian Human Rights Act and that is of
such a nature as”

« ou un acte discriminatoire fondé sur un
motif de distinction illicite au sens de la *Loi
canadienne sur les droits de la personne*, de
telle nature qu'elle suffise à priver une »

(b) by adding after line 19 on page 3 the
following:

b) par adjonction, après la ligne 22, page 3, de
ce qui suit :

“(2.1) For greater certainty, the conduct of
the victim, in a case where the accused
believes that it has brought shame or
dishonour to his family, does not constitute
discrimination on a prohibited ground of
discrimination that would amount to
provocation under subsection (2).”

« (2.1) Il est entendu que la conduite de la
victime, dans le cas où l'accusé croit qu'elle
a jeté la honte ou le déshonneur sur sa
famille, ne constitue pas un acte
discriminatoire fondé sur un motif de
distinction illicite qui équivaut à une
provocation au titre du paragraphe (2). »

S-7

PV-6

Ref.: 7954217

Clause/Article 9

Page 4

Page 4

COMMITTEE STAGE

May 4, 2015

Ms. May (Saanich—Gulf Islands)

ÉTAPE DU COMITÉ

4 mai 2015

Mme May (Saanich—Gulf Islands)

That Bill S-7, in Clause 9, be amended

Que le projet de loi S-7, à l'article 9, soit
modifié :

(a) by replacing line 1 on page 4 with the
following:

a) par substitution, à la ligne 3, page 4, de ce
qui suit :

"293.1 Any person 18 years of age or more
who celebrates, aids or"

« ans toute personne âgée de dix-huit ans ou
plus qui célèbre un rite ou une cérémonie »

(b) by replacing line 7 on page 4 with the
following:

b) par substitution, à la ligne 9, page 4, de ce
qui suit :

"293.2 Any person 18 years of age or more
who celebrates, aids or"

« ans toute personne âgée de dix-huit ans ou
plus qui célèbre un rite ou une cérémonie »

S-7

LIB-1

Ref.: 7903172

Short Title/Titre abrégé

Page 1

Page 1

COMMITTEE STAGE

March 27, 2015

Mr. McCallum (Markham—Unionville)

ÉTAPE DU COMITÉ

27 mars 2015

M. McCallum (Markham—Unionville)

That Bill S-7, in the short title, be amended by replacing line 5 on page 1 with the following:

Que le projet de loi S-7, dans le titre abrégé, soit modifié par substitution, à la ligne 5, page 1, de ce qui suit :

“Tolerance for Barbaric Practices Act.”

« pratiques barbares. »

S-7

NDP-1

Ref.: 7972212

Short Title/Titre abrégé

Page 1

Page 1

COMMITTEE STAGE

May 8, 2015

**Ms. Blanchette-Lamothe (Pierrefonds—
Dollard)**

ÉTAPE DU COMITÉ

8 mai 2015

**Mme Blanchette-Lamothe (Pierrefonds—
Dollard)**

That Bill S-7, in the short title, be amended by
replacing line 5 on page 1 with the following:

*“Tolerance for Barbaric Practices Towards
Women and Children Act.”*

Que le projet de loi S-7, dans le titre abrégé,
soit modifié par substitution, à la ligne 5, page
1, de ce qui suit :

*« pratiques barbares à l'égard des femmes et
des enfants. »*

Carson, Derek

From: [REDACTED]
Sent: 2015-May-08 4:42 PM s.19(1)
To: Carson, Derek; Nesbitt, Scott
Subject: Re: Deadline to submit was 4

I just received the package.
Will forward you.

----- Original Message -----

From: Carson, Derek
Sent: Friday, May 08, 2015 04:40 PM
To: [REDACTED] Nesbitt, Scott
Subject: RE: Deadline to submit was 4

CIC has received the amendment package - 8 amendments for Justice (including the original two Liberal ones) - so six new ones in total.

-----Original Message-----

From: [REDACTED]
Sent: 2015-May-08 4:15 PM
To: Carson, Derek; Nesbitt, Scott
Subject: Deadline to submit was 4

I am trying to find out if other amend were submitted.

Carson, Derek

From: Carson, Derek
Sent: 2015-May-08 4:46 PM
To: [REDACTED] Nesbitt, Scott
Subject: RE: Deadline to submit was 4

CIC has asked to receive the responses by 1:00 p.m. on Monday now, which gives us a bit more time.

-----Original Message-----

From: [REDACTED]
Sent: 2015-May-08 4:42 PM
To: Carson, Derek; Nesbitt, Scott
Subject: Re: Deadline to submit was 4

s.19(1)

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Carson, Derek

From: Carson, Derek
Sent: 2015-May-08 2:03 PM
Subject: RE: Committee Reporting - Citizenship and Immigration - Bill S-7 (ZTBCP) - May 7, 2015
Attachments: CIMMBLUES-47.pdf

Good afternoon,

Please find attached the unofficial transcripts from yesterday's Citizenship Committee meeting on Bill S-7.

Thank you!

-Derek

From: Carson, Derek
Sent: 2015-May-07 3:23 PM
Subject: Committee Reporting - Citizenship and Immigration - Bill S-7 (ZTBCP) - May 7, 2015

Good afternoon,

Please find attached the report, prepared by our colleagues at Citizenship and Immigration, on this morning's meeting of the Citizenship and Immigration Committee, regarding Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*.

Overview of hearing

The Standing Committee on Citizenship and Immigration (CIMM) met for the fifth time as it continued its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*) and heard from additional stakeholders. The meeting adjourned early due to a vote.

Opening Remarks

Ms. Papp strongly supported the bill, noting that whereas the Act is not perfect, it will improve protection for vulnerable individuals including women. She referenced her paper on "Culturally Driven Violence Against Women" in which she used the term "culturally barbaric" and was pleased that 6 of the 14 recommendations in the paper are now part of CIC's *Discover Canada* guide for newcomers. **Ms. Aiken** strongly opposed the bill overall, stating that it should be withdrawn as it was yet "another example of legislating in the absence of empirical evidence." Stressing that Canada's resources should be dedicated to prevention rather than sanctions, she expressed concerns with provisions related to polygamy (i.e. expanded scope of inadmissibility in immigration law would create a two-tiered system of justice, whereas polygamy should be dealt with under existing criminal law with due process and right of appeal) and minimum of age of marriage (i.e. age of 16 is inconsistent with international norms and Canada's position to raise it to 18). **Ms. Witelson** referenced METRAC's written brief submitted to the Committee and opposed the bill from a criminal law perspective. She expressed concerns with provisions related to forced marriages (i.e. criminalization risks isolating vulnerable women and trapping them in an abusive marriage, whereas the issue could be better addressed via education, counseling, financial and housing support), peace bonds (i.e. application process would increase risk of violence against women, whereas existing peace bonds under the *Criminal Code* are sufficient), and defense of provocation (i.e. the bill would fail to protect women who could kill their abusive spouse due to loss of control). **Ms. Abdullah** opposed the bill from an immigration law perspective, citing concerns with provisions related to polygamy. She stated they would not restrict the practice nor protect women and "no additional gatekeeping" would be provided. Given that affected women and children could be rendered inadmissible and deported, she recommended an amendment to exempt women who are unaware of their husband practicing polygamy. **Ms. Faria** suggested replacing "barbaric" with "violent" in the bill's short title, having a central repository of information that would help with

collection of statistical data, working collaboratively with stakeholders and focusing on education strategies to help victims. Having contributed to UK's Forced Marriage Unit (FMU), forced marriage guidelines and *Forced Marriage Civil Protection Act*, Ms. Siddiqui expressed concerns about Bill S-7 (i.e. could undermine rights of women and children part of polygamous relationships to enter and remain in Canada; extending inadmissibility in immigration law could be problematic due to lower standard of proof, lack of adequate evidence, and risk of stereotyping by immigration officers as was the case in the UK). Based on preliminary research with 25 NGOs in the UK, she also cautioned that criminalization of forced marriages could lead to underreporting and instead, a more effective approach would be to improve services, resources, funding to frontline service provider organizations, and enforcement of current civil and criminal laws.

Members' questions focused on ways to help protect and empower women, the impact of deportation, appropriateness of bill's short title, need for adequate resources, possible amendments related to minimum age of marriage and parental consent, factors that impact reporting of abuse/forced marriage/honour-based violence/polygamy, and the use as well as enforcement of immigration vs. criminal and/or civil law to address related issues.

Next Meeting:

The Committee will next meet on May 12, 2015 for clause-by-clause consideration of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*), after which it is anticipated that the Bill will be reported back to the House as early as possible.

Thank you,

Derek Carson

Analyst | Analyste

Cabinet and Parliamentary Affairs Unit | Unité des affaires du Cabinet et parlementaires

Department of Justice Canada | Ministère de la Justice Canada

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derek.carson@justice.gc.ca

Government of Canada | Gouvernement du Canada

REPORT ON COMMITTEE HEARINGS

Name of committee: Standing Committee on Citizenship and Immigration (CIMM)
Report prepared by: Tammy Bokhari, Parliamentary Affairs, 613-437-9099
Date and time: Tuesday, May 7, 2015, 8:48 a.m. to 10:19 a.m.
Location: Room 268, The Valour Building, 151 Sparks St.

Witnesses

8:48-9:45 a.m.

As individuals

Aruna Papp, President, Community Development and Training
Sharry Aiken, Professor, Faculty of Law, Queen's University
Tamar Witelson, Legal Director, METRAC Action on Violence
Silmi Abdullah, Program Lawyer, METRAC Action on Violence
Elsii Faria, Consultant, Marketing and Communications

9:47-10:19 a.m.

As an individual (via videoconference – London, England)

Hannana Siddiqui, Head of Policy and Research, Southall Black Sisters

Overview of hearing

The Standing Committee on Citizenship and Immigration (CIMM) met for the fifth time as it continued its study of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*) and heard from additional stakeholders. The meeting adjourned early due to a vote.

Opening Remarks

Ms. Papp strongly supported the bill, noting that whereas the Act is not perfect, it will improve protection for vulnerable individuals including women. She referenced her paper on "Culturally Driven Violence Against Women" in which she used the term "culturally barbaric" and was pleased that 6 of the 14 recommendations in the paper are now part of CIC's *Discover Canada* guide for newcomers. **Ms. Aiken** strongly opposed the bill overall, stating that it should be withdrawn as it was yet "another example of legislating in the absence of empirical evidence." Stressing that Canada's resources should be dedicated to prevention rather than sanctions, she expressed concerns with provisions related to polygamy (i.e. expanded scope of inadmissibility in immigration law would create a two-tiered system of justice, whereas polygamy should be dealt with under existing criminal law with due process and right of appeal) and minimum of age of marriage (i.e. age of 16 is inconsistent with international norms and Canada's position to raise it to 18). **Ms. Witelson** referenced METRAC's written brief submitted to the Committee and opposed the bill from a criminal law perspective. She expressed concerns with provisions related to forced marriages (i.e. criminalization risks isolating vulnerable women and trapping them in an abusive marriage, whereas the issue could be better addressed via education, counseling, financial and housing support), peace bonds (i.e. application process would increase risk of violence against women, whereas existing peace bonds under the *Criminal Code* are sufficient), and defense of provocation (i.e. the bill would fail to protect women who could kill their abusive spouse due to loss of control). **Ms. Abdullah** opposed the bill from an immigration law perspective, citing concerns with provisions related to polygamy. She stated they would not restrict the practice nor protect women and "no additional gatekeeping" would be provided. Given that affected women and children could be rendered inadmissible and deported, she recommended an amendment to exempt women who are unaware of their husband practicing polygamy. **Ms. Faria** suggested replacing "barbaric" with "violent" in the bill's short title,

having a central repository of information that would help with collection of statistical data, working collaboratively with stakeholders and focusing on education strategies to help victims. Having contributed to UK's Forced Marriage Unit (FMU), forced marriage guidelines and *Forced Marriage Civil Protection Act*, **Ms. Siddiqui** expressed concerns about Bill S-7 (i.e. could undermine rights of women and children part of polygamous relationships to enter and remain in Canada; extending inadmissibility in immigration law could be problematic due to lower standard of proof, lack of adequate evidence, and risk of stereotyping by immigration officers as was the case in the UK). Based on preliminary research with 25 NGOs in the UK, she also cautioned that criminalization of forced marriages could lead to underreporting and instead, a more effective approach would be to improve services, resources, funding to frontline service provider organizations, and enforcement of current civil and criminal laws.

Members' questions focused on ways to help protect and empower women, the impact of deportation, appropriateness of bill's short title, need for adequate resources, possible amendments related to minimum age of marriage and parental consent, factors that impact reporting of abuse/forced marriage/honour-based violence/polygamy, and the use as well as enforcement of immigration vs. criminal and/or civil law to address related issues.

Highlights of questions by committee members

NDP

When asked by **Citizenship and Immigration Critic Lysane Blanchette-Lamothé** about **practices that help women to seek help and prevent forced marriages**, **Ms. Siddiqui** stressed the need for raising awareness in schools and colleges and investing in training professionals. She spoke about how civil law measures and forced marriage protection orders are relied on heavily and effective, though more could be done to ensure there are resources to monitor those children who go back to live with families under a court injunction. Whereas forced marriage guidelines for statutory bodies are also useful, she emphasized the need for proper implementation and enforcement mechanism.

When asked by **Mike Sullivan** (substitute for Irene Mathyssen) **whether there was a similar provision for and related fear of deportation in the UK as proposed by the bill**, **Ms. Siddiqui** noted that though possible, no criminal prosecution of forced marriage had taken place yet, and deportation is already possible in cases of domestic violence. Regarding **whether reporting of abuse could be inhibited given the potential of deportation based on an immigration officer's reasonable suspicion of polygamy**, **Ms. Siddiqui** agreed, underscoring how deportation can impact extended family members and communities and lead to increased stigmatization of women.

When asked by **Jasbir Sandhu** to **comment on the bill's short title**, **Ms. Aiken** asserted that it "skews and misrepresents the problem" and is "deeply offensive" as it furthers stigmatization and xenophobia against certain communities. Regarding **whether the bill is a political or legal document**, **Ms. Aiken** noted it is legal in that it includes legal measures, but it is "patently obvious it's about politics in the most cynical form" and the focus should instead be on ensuring appropriate resources are allocated to help those affected. When asked if there were **enough resources available**, **Ms. Papp** and **Ms. Witelson** agreed more are needed.

Liberal

Citizenship and Immigration Critic John McCallum questioned **whether the bill would be**

consistent with the *Charter*, how the minimum age of marriage could be increased to 18 and whether there would be any unintended consequences associated with it. Ms. Aiken clarified that she was simply pointing out that the age of 16 was inconsistent with international norms of 18, and not suggesting it should be amended. She stressed the need for further study and consultations that would help to identify any unintended consequences. Regarding **whether the bill could be amended to address the issue of parental consent and how it factors into forced marriages**, Ms. Aiken suggested eliminating the role of parental consent which is difficult to police. Regarding any other possible amendments, Ms. Aiken emphasized she was in favour of "scrapping" the bill, not amending it. What asked to **what extent immigration law adds to or replaces criminal law in the UK on issues addressed by the bill**, Ms. Siddiqui stated that to date, there had been no prosecution in criminal law of forced marriage, and immigration laws have not worked as they can make matters worse.

CPC

When asked by Parliamentary Secretary for Citizenship and Immigration Costas Menegakis to **elaborate on discussions at the UN on honour-based violence**, Ms. Papp stressed the need to educate service providers to ask the right questions, noting that flawed risk assessment leads to flawed safety plans. Regarding the **key takeaway on helping women facing gender-based violence and honour-based violence**, Ms. Papp noted the importance of having appropriate risk assessment tools and legislation that protects and empowers women. When asked to **comment on the mandate and effectiveness of UK's FMU**, Ms. Siddiqui noted that the Unit has been very effective in helping British nationals who are taken abroad for forced marriages, with 1,800 cases documented last year, and recommended that a similar unit be created in Canada. Noting that Canada has tripled settlement services funding, Mr. Menegakis asked about the **state of settlement services funding in England**. Ms. Siddiqui noted that due to recent austerity cuts to services and Legal Aid, many refugees and immigrants served by minority community organizations are not getting the same level of service anymore.

When asked by Parliamentary Secretary for Multiculturalism Chungsen Leung to **comment on female genital mutilation**, Ms. Papp stressed the need to document cases and counter the "cultural baggage" that parents bring when they immigrate to Canada which perpetuates barbaric practices such as those covered in her recent book *Daughters of Kismet*. When asked **how the government can convey the message that certain values are not welcome in Canada beforehand**, Ms. Papp strongly asserted that the bill would serve as an effective educational tool to potential immigrants and those already here in order to help prevent barbaric cultural practices from taking place in Canada. Regarding **whether forced marriage and female genital mutilation are barbaric cultural practices**, Ms. Siddiqui said she believes the focus should be instead on strengthening organizations and communities to help women achieve gender equality and prevent violence against women. In terms of **whether these are shared values**, Ms. Siddiqui noted that within cultures which are complex, there are conservative and progressive mindsets, from which an alliance is needed with those who uphold human rights, promote gender equality and condemn violence against all women.

When asked by Jim Eglinski **whether any retribution has been observed from families of girls being stopped at the border or brought back due to a forced marriage situation**, Ms. Siddiqui stated harassment (physical abuse or social stigmatization) from extended family or community members is possible. Regarding **whether forced marriage cases are reported due to word of mouth or legislation**, Ms. Siddiqui noted a combination of these as well as general public debate and social services support contribute to reporting.

Next Meeting: The Committee will next meet on May 12, 2015 for clause-by-clause consideration of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*), after which it is anticipated that the Bill will be reported back to the House as early as possible.

Carson, Derek

From: Carson, Derek
Sent: 2015-May-11 4:28 PM
To: [REDACTED] s.19(1)

Voila:



S-7 - CIMM
Amendment Ch...

Derek Carson

Analyst | Analyste
Cabinet and Parliamentary Affairs Unit | Unité des affaires du Cabinet et parlementaires
Department of Justice Canada | Ministère de la Justice Canada
284 Wellington Street, EMB - 4206 | 284 rue Wellington, ÉCE - 4206
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SECRET

S-7 Clause-by-Clause Motions of Amendments – House Standing Committee on Citizenship and Immigration (CIMM)

Blue highlighted text = CIC lead

Please note this document is confidential and is not to be broadly distributed

Clause	Motion number	Proposed Amendment	Response
2	PV-1 (May)	<p>That Bill S-7, in Clause 2, be amended by replacing lines 17 and 18 on page 1 with the following:</p> <p>“consistent with subparagraph 293(1)(a)(ii) of the <i>Criminal Code</i> and shall not be interpreted so as to include a person who is in any kind of conjugal union with another person that is in any kind of conjugal union with more than one person at the same time.”</p> <p>Impact of the amendment:</p> <p>The amendment would not be consistent with the criminal law definition for practising polygamy. In situations where there is one husband and multiple wives, the amendment could render the husband inadmissible (unless he is a Canadian) and the wives exempt.</p> <p>For those in Canada, individuals could continue to violate the <i>Criminal Code</i>.</p> <p>For those individuals who are abroad, the inadmissibility could not be used to prevent or deter individuals from practising polygamy in Canada.</p>	<p>The Government does not support this amendment.</p> <p>The exemption provided in this amendment would allow polygamy to continue and runs counter to the objectives of Bill S-7. As the bill's title states, there should be zero tolerance for such practices occurring on Canadian soil.</p> <p>The proposed inadmissibility would support this goal by helping prevent polygamy from occurring in Canada by providing new tools to refuse applications for those who may be travelling to Canada to practise polygamy.</p> <p>If an individual stops practising polygamy, the inadmissibility would cease to apply. If that individual is out of status in Canada, discretionary measures may be used to allow the person to remain in Canada. For example, the person may seek to stay in Canada on humanitarian and compassionate grounds.</p>
2	NDP-2 (Blanchette-Lamothe)	<p>That Bill S-7, in Clause 2, be amended by adding after line 18 on page 1 the following:</p> <p>“(3) The Minister shall provide any foreign national sponsored under this Act by her spouse or common-law partner with all relevant information, in that foreign national's own language, on the rights of and the resources available to women in Canada.”</p>	<p>The Government does not support this amendment because the amendment should be ruled out of scope.</p> <p>There are other non-statutory means to support vulnerable women while minimizing costs to taxpayers.</p> <p>For instance, CIC:</p>

SECRET

		<p>Impact of the amendment: The amendment would, or intends to, create a legislative obligation for CIC to provide such information to women being sponsored.</p> <p>This amendment could possibly be ruled out of scope as it is not linked to the inadmissibility provision.</p>	<ul style="list-style-type: none"> o disseminates the brochure "Information for Sponsored Spouses or Partners" to those subject to the conditional permanent residence measure who are victims of abuse or neglect, advising them that they do not have to remain in an abusive situation and indicating where to find help; o funds settlement and integration organizations that support newcomers seeking assistance and protection from situations of abuse by offering information and workshops; o publishes <i>Discover Canada</i> and <i>Welcome to Canada</i>, which describes the principle of gender equality in Canada and states that family and honour-based violence are unacceptable in Canada; o provides protection and assistance for victims of human trafficking and emergency processing of work permits for live-in caregivers who are victims of abuse in their workplace; o supports the Women at Risk program within the resettlement program to ensure that female refugees who face a heightened risk to their safety and security are identified and brought to Canada quickly and safely; and o created a designated line within its Call Centre for victims of abuse or forced marriage.
4	LIB-2 (McCallum)	<p>That Bill S-7, in Clause 4, be amended by replacing lines 6 and 7 on page 2 with the following:</p> <p>"2.2(1) No person who is under the age of 18 may contract marriage.</p> <p>(2) Despite subsection (1), the Governor in Council may, by regulation, at the request of the lieutenant governor in council of a province, that the minimum age to contract marriage is 16 or 17, as the case may be, may seek an order to declare that he or she has the capacity to contract marriage."</p>	<p>The Government does not support this amendment.</p> <p>The constitutional jurisdiction of the federal Parliament is to set the absolute minimum age for marriage for all Canadian residents. The proposal would result in several different absolute minimum ages. It is unclear whether the age restrictions would apply according to the province or territory where the marriage takes place, or the province or territory where one or both of the couple ordinarily reside.</p>

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		<p>Impact of the amendment: The amendment would result in several different absolute minimum ages across Canada, rather than one national minimum age for all Canadians, and risk confusion for Canadians who marry outside of Canada.</p>	<p>This would lead to legal confusion for Canadians and in particular for young people who wish to marry.</p> <p>For those Canadian residents who marry outside of Canada, there would also be legal confusion as to which minimum age applies.</p> <p>The Government of Canada agrees with the apparent intention of the proposed amendment, which is to provide additional protections to young people who marry between age 16 and the age of majority. But the Government of Canada prefers to achieve that goal through the cooperation of the provinces and territories.</p> <p>Age 16 is also the absolute minimum age for marriage in like-minded countries, with only limited exceptions.</p>
4	PV-2 (May)	<p>That Bill S-7, in Clause 4, be amended by deleting lines 6 and 7 on page 2.</p> <p>Impact of the amendment: The amendment would delete the proposed new section 2.2 of the <i>Civil Marriage Act</i>, which proposes a new national absolute minimum age for marriage of 16, and move it without any change to a new section 2.4 in a separate proposed new clause 4.1 (see PV-3) in order that it not come into force until a House of Commons Committee or a Senate Committee or a joint House of Commons and Senate Committee submits a report on the "proper minimum age for contracting a marriage" (see PV-4).</p>	<p>The Government does not support this amendment.</p> <p>The amendment makes no substantive change and is unnecessary. The amendment moves the proposed new section 2.2 of the <i>Civil Marriage Act</i>, which sets out a new national minimum age for marriage, to a new section 2.4 in a separate proposed new clause 4.1 (see PV-3) in order that it not come into force until a House of Commons Committee or a Senate Committee or a joint House of Commons and Senate Committee submits a report on the "proper minimum age for contracting a marriage" (see PV-4)</p> <p>This approach leaves a lack of uniformity in the law in Canada with regard to the absolute minimum age for marriage. It would leave the minimum age for marriage at 16 in the Province of Quebec only. In other provinces and territories, the common law would apply.</p>

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			As mentioned, this would deny legal protection to minors who are Canadian residents not residing in the Province of Quebec.
4.1 (new)	PV-3 (May)	<p>That Bill S-7 be amended by adding after line 11 on page 2 the following new clause:</p> <p>“4.1 The Act is amended by adding the following after section 2.3:</p> <p>2.4 No person who is under the age of 16 years may contract marriage.”</p> <p>Impact of the amendment: The amendment would add a proposed new section 2.4 of the <i>Civil Marriage Act</i>, with the same wording as the current proposed section 2.2 which PV-2 proposes to delete.</p>	<p>The Government does not support this amendment.</p> <p>The amendment makes no substantive change and is unnecessary.</p> <p>The only reason for the amendment is to move the current proposed new section 2.2 of the <i>Civil Marriage Act</i>, which sets out a new national minimum age for marriage, to a new section 2.4 in a separate proposed new clause 4.1.</p>
5.1 (new)	PV-4 (May)	<p>That Bill S-7 be amended by adding after line 19 on page 2 the following new clause:</p> <p>“COMING INTO FORCE</p> <p>5.1 Section 4.1 comes into force on a day to be fixed by order of the Governor in Council, but the day that is fixed must not be before the day on which any committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for that purpose submit to the Senate, the House of Commons or both Houses of Parliament, as the case may be, a report respecting the proper minimum age for contracting a marriage under section 2.4 of the <i>Civil Marriage Act</i>, as enacted by that section 4.1.”</p> <p>Impact of the amendment:</p>	<p>The Government does not support this amendment.</p> <p>The amendment would add unnecessary delay to the needed protection for minors who are Canadian residents (other than those residing in the Province of Quebec) from early marriage under age 16.</p> <p>Age 16 was chosen as the appropriate absolute minimum age for marriage in Canada based on earlier study by the Uniform Law Conference of Canada, and the need to balance protection for minors against the desire not to prohibit mature minors from choosing to marry the parent of their common child.</p> <p>Pending the establishment or designation of a Committee of Parliament to study the “proper minimum age for contracting a marriage”, the current state of the law in</p>

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		<p>The amendment would delay the coming into force of the new proposed national absolute minimum age for marriage until such time as a Committee of Parliament is established or designated to study the "proper minimum age for contracting a marriage", and reports. In the interim, the current state of the law in Canada with regard to the absolute minimum age for marriage would remain – i.e. federal law would specify age 16 as the minimum age for marriage in the law of the Province of Quebec only, and in other provinces and territories, the common law would apply, which is generally interpreted as age 12 for girls and age 14 for boys – with the result that minors who are Canadian residents (other than those residing in the Province of Quebec) would be denied legal protection from early marriage under age 16, until such time as such a Committee reported.</p>	<p>Canada with regard to the absolute minimum age for marriage would remain – i.e. federal law would specify age 16 as the minimum age for marriage in the law of the Province of Quebec only, and in other provinces and territories, the common law would apply.</p> <p>The effect of this amendment would be to deny legal protection to minors who are Canadian residents (other than those residing in the Province of Quebec) from early marriage under age 16.</p> <p>Age 16 is also the absolute minimum age for marriage in like-minded countries, with only limited exceptions.</p>
7	PV-5 (May)	<p>That Bill S-7, in Clause 7, be amended by deleting lines 9 to 19 on page 3.</p> <p>Impact of the amendment: The amendment would leave unchanged the scope of the current defence of provocation.</p>	<p>The Government does not support this amendment.</p> <p>This amendment would leave the defence of provocation intact, and would therefore permit persons accused of murdering their spouses or other family members who provoked them through lawful words or actions to continue to raise the defence. In some types of circumstances and depending on the evidence, the defence could be successful in these types of cases. In many cases, even if the defence is ultimately unsuccessful, litigating whether and how the defence applies in these cases is likely to be costly and time-consuming for all parties. The amendment therefore runs counter to the objectives of Bill S-7, which is to modify the law so that it clearly excludes provocation on the basis of lawful conduct.</p> <p>Criticisms of the defence of provocation have been made in all jurisdictions with a legal tradition similar to Canada's that have the defence. In the past decade, most such jurisdictions have either abolished or limited their provocation defences. Three Australian states and New</p>

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			<p>Zealand have <u>abolished</u> the provocation defence entirely. In 2014, the Australian state of New South Wales passed legislation similar to that in Bill S-7 that limits the provocation defence to conduct by the victim that amounts to a relatively serious criminal offence. Three Australian states and the United Kingdom have limited their provocation defences in other ways. The reforms proposed in Bill S-7 will bring Canada's law of provocation into line with those of similar countries.</p> <p>As the intent of the amendment is to defeat clause 7 and it does so by deleting the text that would change the law, the amendment may be out of order. The correct procedure is for the Committee to vote down clause 7, not for the content of clause 7 to be deleted by amendment.</p>
7	LIB-3 (McCallum)	<p>That Bill S-7, in Clause 7, be amended</p> <p>(a) by replacing lines 12 to 14 on page 3 with the following:</p> <p>“stitute an indictable offence under this Act or discrimination on a prohibited ground of discrimination within the meaning of the <i>Canadian Human Rights Act</i> and that is of such a nature as”</p> <p>(b) by adding after line 19 on page 3 the following:</p> <p>“(2.1) For greater certainty, the conduct of the victim, in a case where the accused believes that it has brought shame or dishonour to his family, does not constitute discrimination on a prohibited ground of discrimination that would amount to provocation under subsection (2).”</p> <p>Impact of the amendment:</p>	<p><u>A) The Government does not support amendment (a) because:</u></p> <p>It is not clear whether the amendment means that conduct must be discrimination that is <u>contrary</u> to the CHRA (i.e. specific discriminatory practices described in the CHRA relative to the workplace and the marketplace), or whether “discrimination” is used in a more general sense (which is not defined in law) and only the grounds of discrimination in the CHRA are invoked;</p> <p>However it would be interpreted, it would broaden the existing defence of provocation;</p> <p>The list of prohibited grounds in the CHRA is tailored to discrimination in the workplace and marketplace, and is inappropriate to the criminal context; and</p>

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		<p>The amendments would work together to make the defence of provocation available where the provoking conduct of the victim is "discrimination on a prohibited ground of discrimination within the meaning of the <i>Canadian Human Rights Act</i>" (CHRA) and then to exclude the expanded notion of provocation where the accused believes that the victim's behaviour brought shame or dishonour to their family.</p>	<p>No other common law jurisdictions have amended their provocation laws to include "discrimination: for instance, New Zealand and the Australian states of Victoria, Tasmania and Western Australia have abolished provocation; New South Wales renamed the defence "extreme provocation" and now limits it to criminal offences punishable by at least 5 years in prison (the same approach as Bill S-7); and the United Kingdom abolished provocation and replaced it with a defence of "loss of control" that is available where the accused either had a "fear of serious violence from the victim" or where the victim did or said something "of an extremely grave nature" that gave Accused "justifiable sense" of being "seriously wronged".</p> <p><u>B) The Government does not support amendment (b) because:</u></p> <p>It is dependent on amendment (a); and</p> <p>It would not prevent the defence from being raised in honour-killing cases where there is no evidence related to the beliefs of the accused (shame/dishonour caused by the victim).</p>
9	PV-6 (May)	<p>That Bill S-7, in Clause 9, be amended</p> <p>(a) by replacing line 1 on page 4 with the following:</p> <p>"293.1 Any person 18 years of age or more who celebrates, aids or"</p> <p>(b) by replacing line 7 on page 4 with the following:</p> <p>"293.2 Any person 18 years of age or more who celebrates, aids or"</p>	<p>The Government does not support amendment (a) and (b) because:</p> <p>The <i>Criminal Code</i> sets out offences that have general application and proclaim standards of socially-unacceptable behavior.</p> <p>It is important to underline that youth under age 18, who are accused of a criminal offence, are subject to <u>a separate regime in relation to charging</u>, criminal procedure, sentencing, rehabilitation and reintegration pursuant to the</p>

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	<p>Impact of these amendments: These amendments would exclude youth between the ages of 12 and 17 from criminal liability for the proposed offences of forced and underage marriage ceremony.</p>	<p><u>Youth Criminal Justice Act</u> (YCJA). The YCJA recognizes that youth must be held accountable, but in a way that takes into account their greater dependency, reduced level of maturity, and the principle that youth are presumed to be less morally blameworthy than adults.</p> <p>For instance, the YCJA requires police officers to consider using alternatives to charging or "extrajudicial measures" in all cases of youth offending. If extrajudicial measures are deemed to be inappropriate, charges may be laid. Whether charges proceed to trial will be based on the prosecutor's assessment of the public interest and whether there is a reasonable prospect of conviction in each individual case.</p> <p>Studies on forced marriage indicate that multiple family members can take part in the use of force for the purpose of compelling a person to marry against their will. Siblings may be tasked by their parents with the job of enforcing or assisting with the enforcement of the marriage.</p> <p>Excluding youth from the ambit of these offences might result in parents' increased reliance on their minor children to force another child into an unwanted marriage, and may fail to hold accountable individuals whose conduct is blameworthy and which directly contributes to the victimization of another.</p> <p>Similarly, providing immunity for anyone under age 18 who marries another person knowing that the other person is marrying against their will or is under the age of 16, fails to take into consideration that the social harm and impact on the victim is the same regardless of whether the person they are forced to marry is above or below the age of 18.</p> <p>Finally, it would be inconsistent for the law to hold these youth accountable for the general offences committed in the</p>
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			course of forcing someone to marry, such as assault and forcible confinement, while exempting them from the specific offence of active participation in the forced marriage ceremony.
Short title	LIB-1 (McCallum)	<p>That Bill S-7, in the short title, be amended by replacing line 5 on page 1 with the following:</p> <p><i>"Tolerance for Barbaric Practices Act."</i></p> <p>Impact of the amendment: <u>The amendment would remove the term "Cultural" from the short title of the Act.</u></p>	<p>The Government does not support this amendment.</p> <ul style="list-style-type: none"> • <u>The term "barbaric cultural practices" encompasses forms of family violence, such as child, forced and polygamous marriage, female genital mutilation and so-called "honour"-based violence.</u> • <u>These practices have devastating impacts, particularly on women and girls as well as on families and society in general. They severely affect all those involved, from influencing immigration outcomes to breaking down opportunities for integration and success.</u> • <u>The Bill affirms the Government's strong stance against these practices, and sends the message that such acts are contrary to Canadian values, unacceptable to Canadians, and will not be tolerated in Canada.</u> • <u>As Minister of CIC Chris Alexander stated during the House of Commons Second Reading debate on Bill S-7, "...the defence of these barbaric practices is often mistakenly made in the name of culture. We want to point out that the only culture that is unacceptable here, and which we hope would be eliminated from Canada with this bill, is the culture of violence against women. There should be no defence of violence against women that makes a cultural reference.</u>

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			There is no room for any particular group to be insulted by this bill because, if they are engaging in violence against women, they are engaging in a crime, a barbaric practice, and all Canadians understand that it is wrong.”(Second Reading Debate, March 12, 2015)
Short title	NDP-1 (Blanchette-Lamothe)	<p>That Bill S-7, in the short title, be amended by replacing line 5 on page 1 with the following:</p> <p><i>“Tolerance for Barbaric Practices Towards Women and Children Act.”</i></p> <p>Impact of the amendment: The amendment would remove the term “Cultural” from the short title of the Act and add the words “Towards Women and Children”.</p>	<p>The Government does not support this amendment.</p> <ul style="list-style-type: none"> • The term “barbaric cultural practices” encompasses forms of family violence, such as child, forced and polygamous marriage, female genital mutilation and so-called “honour”-based violence. • These practices have devastating impacts, particularly on women and girls as well as on families and society in general. They severely affect all those involved, from influencing immigration outcomes to breaking down opportunities for integration and success. • The Bill affirms the Government’s strong stance against these practices, and sends the message that such acts are contrary to Canadian values, unacceptable to Canadians, and will not be tolerated in Canada. • As Minister of CIC Chris Alexander stated during the House of Commons Second Reading debate on Bill S-7, “...the defence of these barbaric practices is often mistakenly made in the name of culture. We want to point out that the only culture that is unacceptable here, and which we hope would be eliminated from Canada with this bill, is the culture of violence against

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			women. There should be no defence of violence against women that makes a cultural reference.
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Carson, Derek

From: Carson, Derek
Sent: 2015-May-11 9:03 AM
To: Nesbitt, Scott
Subject: RE: Bill S-7: Responses to Amendments for Monday morning

They're almost done. Don had some comments which have been incorporated and we're waiting on final approval of the whole package.

From: Nesbitt, Scott
Sent: 2015-May-10 6:23 PM
To: Carson, Derek
Subject: Re: Bill S-7: Responses to Amendments for Monday morning

Ok, thanks for the heads up. I'm in at 9:00 tomorrow, and will plan to deal with this asap in the morning.

From: Carson, Derek
Sent: Sunday, May 10, 2015 03:54 PM
To: Nesbitt, Scott
Subject: Re: Bill S-7: Responses to Amendments for Monday morning

Hi Scott,

It doesn't look like you'll be getting anything tonight for approval.

We're waiting on responses to three of the amendments and Don Piragoff hasn't seen anything yet as far as I know.

I'll let you know if anything changes but for now it looks like we'll have to finalize the responses tomorrow morning.

Thanks,

-Derek

From: Nesbitt, Scott
Sent: Friday, May 08, 2015 07:13 PM
To: Carson, Derek
Subject: Re: Bill S-7: Responses to Amendments for Monday morning

Thanks.

From: Carson, Derek
Sent: Friday, May 08, 2015 06:57 PM
To: Nesbitt, Scott
Subject: Re: Bill S-7: Responses to Amendments for Monday morning

Just fyi - CIC is good with having the lead on the first amendment (PV-1).

From: Carson, Derek
Sent: Friday, May 08, 2015 05:51 PM
To: Nesbitt, Scott
Subject: FW: Bill S-7: Responses to Amendments for Monday morning

FYI – here are the amendments and the template.

CIC wanted us to be the lead on the first amendment (PV-1) but Joanne Klineberg disagrees and provided her advice to CIC with respect to that amendment (attached):

<<RE: Official Tasking: Bill S-7 CIMM CbC - Response to LPC Amendments>>

Elissa Lieff also agrees that CIC, not Justice, should be responsible for the first amendment.

I'll email you if/when I get updates on the progress of the responses over the weekend.

Thanks!

-Derek

From: Carson, Derek
Sent: 2015-May-08 5:48 PM
To: Klineberg, Joanne; Blackell, Gillian; Hitch, Lisa
Cc: * SADMO/Admin; Lieff, Elissa; * CLP SGC/Office; * CPAU Group
Subject: RE: Bill S-7: Responses to Amendments for Monday morning

Hi all,

We've received the template populated by CIC (attached). For ease of reference I've attached again the amendment package to this email.

CIC has indicated that Justice is responsible for most of the amendments, however Joanne has indicated that CIC should be the lead for the first amendment (PV-1) as it deals with IRPA.

In the meantime, I've highlighted the amendments for which Justice is responsible to provide a response.

<<S-7 - CIMM Amendment Chart - combined - 2015-05-08.docx>> <<S-7 amdt package - Liasse d'amendements.pdf>>

I'll be available over the weekend and monitoring my blackberry periodically.

Thanks everyone!

-Derek

From: Carson, Derek
Sent: 2015-May-08 4:48 PM
To: Klineberg, Joanne; Blackell, Gillian; Hitch, Lisa
Cc: * SADMO/Admin; Lieff, Elissa; * CLP SGC/Office; * CPAU Group
Subject: RE: Bill S-7: Responses to Amendments for Monday morning

While we wait for CIC to carve out the Justice ones and populate the template, I've attached the full amendment package here:

<< File: S-7 amdt package - Liasse d'amendements.pdf.pdf >>

From: Carson, Derek
Sent: 2015-May-08 4:45 PM
To: Klineberg, Joanne; Blackell, Gillian; Hitch, Lisa
Cc: * SADMO/Admin; Lieff, Elissa; * CLP SGC/Office; * CPAU Group
Subject: RE: Bill S-7: Responses to Amendments for Monday morning

Hi again,

CIC has received the amendment package from the Clerk – 8 amendments in total for Justice which includes the original two from Mr. McCallum – so six new ones.

CIC is populating their template now and will send it to us.

They have a new deadline of 1:00 p.m. on Monday to receive everything so that gives us a bit more time.

Once I receive the package and the template I'll forward it on to everyone.

Thanks!

-Derek

From: Carson, Derek
Sent: 2015-May-08 4:08 PM
To: Klineberg, Joanne; Blackell, Gillian; Hitch, Lisa
Cc: * SADMO/Admin; Lieff, Elissa; * CLP SGC/Office; * CPAU Group
Subject: RE: Bill S-7: Responses to Amendments for Monday morning

Hi Joanne,

Yes, it will be the same template, but CIC may not have the time to populate the templates with the individual amendments tonight (it depends on when they receive them).

So there may be a bit of 'cut and paste' involved of the amendment itself into the template.

From: Klineberg, Joanne
Sent: 2015-May-08 3:29 PM
To: Carson, Derek; Blackell, Gillian; Hitch, Lisa
Cc: * SADMO/Admin; Lieff, Elissa; * CLP SGC/Office; * CPAU Group
Subject: RE: Bill S-7: Responses to Amendments for Monday morning

Derek, just to confirm whey you say "responses" you mean we should fill in the same template we did for the first two liberal amendments? That would certainly simplify our task if we follow that structure. Just want to indicate that I would likely come in Sunday morning to do any assessments that are tasked to me.

From: Carson, Derek
Sent: May 8, 2015 2:55 PM
To: Klineberg, Joanne; Blackell, Gillian; Hitch, Lisa
Cc: * SADMO/Admin; Lieff, Elissa; * CLP SGC/Office; * CPAU Group
Subject: Bill S-7: Responses to Amendments for Monday morning

Hi everyone,

Sometime this evening CIC will send me the amendments they receive from the Clerk. I'll forward that on to everyone on this email.

CIC has asked that we provide our responses, approved by our MO, on Monday morning.

DMO is ok with coming in on the weekend to review/approve the responses to the amendments.

MO is ok with coming in on Sunday evening or at least reviewing the responses on an urgent basis Monday morning.

I'll do my best to liaise with people over the weekend if anyone needs to me to contact CIC for any clarification or any concerns. I'll be available by blackberry email and my number is 613-219-1880.

I have Joanne's cell phone number, if anyone else needs to provide a contact number please do so (if you won't have access to your emails).

The hope is to have the responses approved up the chain and by SADMO sometime on Sunday for DMO to come in to do their review. Once SADMO has approved, we will inform DMO so that Scott can come in to look at them.

CIC will provide the template for the responses along with the amendments.

Please let me know if you have any questions or concerns.

Thanks very much,

Derek Carson
Analyst | Analyste
Cabinet and Parliamentary Affairs Unit | Unité des affaires du Cabinet et parlementaires

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derek.carson@justice.gc.ca
Government of Canada | Gouvernement du Canada

Carson, Derek

From: Carson, Derek
Sent: 2015-May-12 1:32 PM
Subject: RE: Committee Reporting - Bill S-7 (ZTBCP) passed by Citizenship and Immigration Committee without amendment

Good afternoon,

As promised, please find attached the report prepared by our colleagues at Citizenship and Immigration as well as the unofficial transcripts:



CIMM_CommitteeCIMMBLUES-48....
Report_final_20...

Thanks very much!

-Derek

From: Carson, Derek
Sent: 2015-May-12 10:29 AM
Subject: Committee Reporting - Bill S-7 (ZTBCP) passed by Citizenship and Immigration Committee without amendment

Good morning,

Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*, was passed this morning, without amendment, by the Citizenship and Immigration Committee.

It is expected to be reported back to the House of Commons tomorrow.

Mr. McCallum (Lib.) supported the Bill.

Clause 9 of the Bill was argued by NDP members as possibly further marginalizing victims (that everyone is guilty of an indictable offence if they celebrate, aid, or participate in a marriage knowing that one of the persons being married is either under the age of 16 or is being married against their will).

The full report will be prepared by our colleagues at Citizenship and Immigration Canada and will be sent to you accordingly.

Thanks very much,

Derek Carson

Analyst | Analyste

Cabinet and Parliamentary Affairs Unit | Unité des affaires du Cabinet et parlementaires

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REPORT ON COMMITTEE HEARINGS

Name of committee: Citizenship and Immigration

Report prepared by: Tammy Bokhari, Parliamentary Affairs, 613-437-9099

Date and time: Tuesday, May 12, 2015, 8:45 a.m. to 9:45 a.m.

Location: Room 253-D, Centre Block

Appearing:

8:45-9:45 a.m.

Department of Citizenship and Immigration

Maureen Tsai, Director, Admissibility Branch

Karen Clarke, Deputy Director, Admissibility Branch

Paul Yurack, Counsel, Legal Services

Department of Justice

Gillian Blackell, Senior Counsel, Family, Children and Youth Sector

Lisa Hitch, Senior Counsel, Family, Children and Youth Sector

Joanne Klineberg, Senior Counsel, Criminal Law Policy Section

Overview of hearing:

The Committee met to discuss clause-by-clause consideration of Bill S-7 (*Zero Tolerance for Barbaric Cultural Practices Act*). No questions were asked of CIC and DOJ officials nor were any additional amendments table-dropped during the meeting.

All 16 clauses of the Bill were voted on and carried (with recorded vote for clause 9). The Bill carried (with only NDP opposed) and it was agreed that the Chair report it without amendment to the House of Commons as soon as possible, likely on May 13, 2015.

With respect to clause-by-clause consideration, the first clause was referred to the end of proceedings. Clauses 3, 5, 6, 8, 10-15 were agreed to with no debate. Overall, there were 11 motions to amend the Bill (6 PV, 3 LPC, 2 NDP). Regarding proposed amendments to the remaining clauses:

- **Clause 2:** PV (May) amendment to exempt women who are forced into a polygamous marriage from being inadmissible was negated. NDP (Blanchette-Lamothe) amendment to create a legal obligation for the Minister of CIC to provide foreign nationals sponsored by their spouse or common-law partner with relevant information in the foreign national's language on the rights and resources available to women in Canada, was ruled out of order by the Chair i.e. it brought a new concept that is beyond the scope of the bill as adopted by the House at Second Reading.
- **Clause 4:** During debate on proposed LPC (McCallum) amendment to create a provision whereby the minimum age of marriage would be 18, except in provinces that have established a regime for judicial oversight for marriage of 16 and 17 year olds, NDP (Blanchette-Lamothe) asked why 16 was chosen as the minimum age of marriage and whether any consultations/public debates with provinces and territories had taken

place before taking this decision. LPC (McCallum) criticized the Government for "being excessively timid" in not accepting the amendment given that the Minister of Justice is already working with provincial counterparts to ensure such protections are brought into marriage law. There were 3 interrelated PV amendments proposed for Clause 4, all of which were negated.

- **Clause 7:** PV (May) amendment to delete the section of the bill related to the defense of provocation was negated. LPC (McCallum) amendments to make the defense of provocation available to those who face extreme and continuing discrimination were also negated.
- **Clause 9:** PV (May) amendment to exclude youth between the ages of 12 and 17 from criminal liability for the proposed offences of forced and underage marriage ceremony was negated. NDP (Blanchette-Lamothe) expressed concerns about the Bill further marginalizing and victimizing victims, asserting that additional study and consultations were needed to study the issues and impact of the proposed measures of the Bill. NDP (Mathyssen) echoed these concerns, asserting that the "punitive mentality at work" would only make women and children who are vulnerable even more vulnerable.
- **Clause 16:** Regarding coming into force, NDP (Blanchette-Lamothe) reiterated concerns about undesirable, unintended consequences.
- **Clause 1:** LPC (McCallum) and NDP (Blanchette-Lamothe) amendments to amend the short title were ruled out of order by the Chair i.e. the title may be amended only if the bill has been so altered as to necessitate such an amendment.

Next Meeting

On Thursday, May 14, 2015, the Sub-Committee on Agenda and Procedures of the Standing Committee on Citizenship and Immigration (SCIM) will meet *in camera* to consider Committee business, followed by an *in camera* meeting of the Standing Committee on Citizenship and Immigration (CIMM). After the Parliamentary Break Week (May 18-22), CIMM will meet on May 26, 2015 to hear from the Minister and CIC officials on 2015-1016 Main Estimates.

s.19(1)

Carson, Derek

From: Carson, Derek
Sent: 2015-May-14 4:46 PM
To: Nesbitt, Scott
Cc: Lafleur, Eric; [REDACTED]
Subject: Bill S-7 - Scheduled for Report Stage debate on Thursday, May 28 - Amendments have been tabled seeking to delete clauses

Hi Scott,

Bill S-7 is scheduled to be debated at Report Stage on Thursday, May 28.

Amendments have already been tabled that seek to delete every clause in the Bill which are not necessarily out of order unless they are identical to ones brought up in Committee (I think one or two).

I've contacted Citizenship and Immigration to get the ball rolling on the process for the Report Stage amendments (analysis and TPs) should there be a need for any, or should any other amendments be tabled.

In the meantime they can be found here:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Pub=NoticeOrder&Mode=1&Language=E&Parl=41&Ses=2&File=12>

Thanks,

Derek Carson

Analyst | Analyste

Cabinet and Parliamentary Affairs Unit | Unité des affaires du Cabinet et parlementaires

Department of Justice Canada | Ministère de la Justice Canada

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derek.carson@justice.gc.ca

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Carson, Derek

From: Carson, Derek
Sent: 2015-May-15 2:41 PM s.19(1)
To: [REDACTED]
Cc: * CPAU Group
Subject: Bill S-7 (Zero Tolerance for Barbaric Cultural Practices): Third Reading Speeches as requested by Citizenship and Immigration

Hi [REDACTED]

Please find attached the five speeches as requested by Citizenship and Immigration on Bill S-7 (one 20-min, and four 10-min).



S-7 3rd Reading Speech House #... S-7 3rd Reading Speech House #... S-7 3rd Reading Speech House #... S-7 3rd Reading Speech House #... S-7 3rd Reading Speech House #...

If you approve, we can send them to Citizenship and Immigration.

As you know, Report Stage is scheduled for Thursday, May 28.

Thanks!

Derek Carson

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Carson, Derek

From: Carson, Derek
Sent: 2015-May-20 10:42 AM
To: Nesbitt, Scott
Cc: Lafleur, Eric
Subject: FW: Bill S-7 - Scheduled for Report Stage debate on Thursday, May 28 - Amendments have been tabled seeking to delete clauses

FYI – CIC would like TPs on the Report Stage amendments to Bill S-7 by Monday.

Thanks!

-Derek

From: Carson, Derek
Sent: 2015-May-20 10:40 AM
To: Hitch, Lisa; Klineberg, Joanne; Blackell, Gillian
Cc: * SADMO/Admin; * CLP SGC/Office; * CPAU Group; Lieff, Elissa
Subject: RE: Bill S-7 - Scheduled for Report Stage debate on Thursday, May 28 - Amendments have been tabled seeking to delete clauses

Hi everyone,

So CIC has gotten back to me, and they would like TPs to address the amendments, MO-approved, by Monday, May 25.

I said that we would do our best.

In order to meet that timeline, we would need to have the TPs sent to CPAU by **Friday, May 22**.

I'm still waiting on them to let me know what amendments we should lead on (but I think you would know better than I do).

They have not provided a template, but if you wanted to start working on what Justice usually provides (short analysis, effect of amendment, and short TPs (one or two lines)) that would be appreciated.

I'll email again when I have more information from CIC.

Thanks and sorry for the short notice.

Derek Carson

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From: Carson, Derek
Sent: 2015-May-14 3:47 PM
To: Hitch, Lisa; Klineberg, Joanne; Blackell, Gillian
Cc: * SADM/Office; * CLP SGC/Office; * CPAU Group; Lieff, Elissa
Subject: Bill S-7 - Scheduled for Report Stage debate on Thursday, May 28 - Amendments have been tabled seeking to delete clauses

Hi all,

Bill S-7 is scheduled to be debated at Report Stage on Thursday, May 28.

Amendments have already been tabled that seek to delete every clause in the Bill (which I assume will be ruled out of order).

I've contacted Citizenship and Immigration to get the ball rolling on the process for the Report Stage amendments (analysis and TPs) should there be a need for any, or should any others be tabled.

In the meantime they can be found here:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Pub=NoticeOrder&Mode=1&Language=E&Parl=41&Ses=2&File=12>

And below:

ion No. 1 — May 13, 2015 — Ms. Blanchette-Lamothe (Pierrefonds—Dollard) — That Bill S-7 be amended by deleting long title.

Pursuant to Standing Order 76.1(2), notice also received from:

Ms. Mathysen (London—Fanshawe), Mr. Sandhu (Surrey North), Mr. Julian (Burnaby—New Westminister) and Ms. May (Saanich—Gulf Islands) — May 13, 2015

Motion n° 1 — 13 mai 2015 — M^{me} Blanchette-Lamothe (Pierrefonds—Dollard) — Que le projet de loi S-7 soit modifié par suppression du titre intégral.

Conformément à l'article 76.1(2) du Règlement, avis aussi reçu de :

M^{me} Mathysen (London—Fanshawe), M. Sandhu (Surrey-Nord), M. Julian (Burnaby—New Westminster) et M^{me} May (Saanich—Gulf Islands) — 13 mai 2015

ion No. 2 — May 13, 2015 — Ms. Blanchette-Lamothe (Pierrefonds—Dollard) — That Bill S-7 be amended by deleting short title.

Pursuant to Standing Order 76.1(2), notice also received from:

Ms. Mathysen (London—Fanshawe), Mr. Sandhu (Surrey North), Mr. Julian (Burnaby—New Westminister) and Ms. May (Saanich—Gulf Islands) — May 13, 2015

Motion n° 2 — 13 mai 2015 — M^{me} Blanchette-Lamothe (Pierrefonds—Dollard) — Que le projet de loi S-7 soit modifié par suppression du titre abrégé.

Conformément à l'article 76.1(2) du Règlement, avis aussi reçu de :

M^{me} Mathysen (London—Fanshawe), M. Sandhu (Surrey-Nord), M. Julian (Burnaby—New Westminster) et M^{me} May (Saanich—Gulf Islands) — 13 mai 2015

ion No. 3 — May 13, 2015 — Ms. Blanchette-Lamothé (Pierrefonds—Dollard) — That Bill S-7 be amended by deleting section 2.

Pursuant to Standing Order 76.1(2), notice also received from:

Ms. Mathyssen (London—Fanshawe), Mr. Sandhu (Surrey North), Mr. Julian (Burnaby—New Westminster) and Ms. May (Saanich—Gulf Islands) — May 13, 2015

Motion No. 4 — May 13, 2015 — Ms. May (Saanich—Gulf Islands) — That Bill S-7 be amended by deleting Clause 3.

Motion No. 5 — May 13, 2015 — Ms. May (Saanich—Gulf Islands) — That Bill S-7 be amended by deleting Clause 4.

Motion No. 6 — May 13, 2015 — Ms. May (Saanich—Gulf Islands) — That Bill S-7 be amended by deleting Clause 5.

Motion No. 7 — May 13, 2015 — Ms. May (Saanich—Gulf Islands) — That Bill S-7 be amended by deleting Clause 6.

ion No. 8 — May 13, 2015 — Ms. Blanchette-Lamothé (Pierrefonds—Dollard) — That Bill S-7 be amended by deleting section 7.

Pursuant to Standing Order 76.1(2), notice also received from:

Ms. Mathyssen (London—Fanshawe), Mr. Sandhu (Surrey North), Mr. Julian (Burnaby—New Westminster) and Ms. May (Saanich—Gulf Islands) — May 13, 2015

Motion No. 9 — May 13, 2015 — Ms. May (Saanich—Gulf Islands) — That Bill S-7 be amended by deleting Clause 8.

ion No. 10 — May 13, 2015 — Ms. Blanchette-Lamothé (Pierrefonds—Dollard) — That Bill S-7 be amended by deleting section 9.

Pursuant to Standing Order 76.1(2), notice also received from:

Ms. Mathyssen (London—Fanshawe), Mr. Sandhu (Surrey North), Mr. Julian (Burnaby—New Westminster) and Ms. May (Saanich—Gulf Islands) — May 13, 2015

Motion n° 3 — 13 mai 2015 — M^{me} Blanchette-Lamothé (Pierrefonds—Dollard) — Que le projet de loi S-7 soit modifié par suppression de l'article 2.

Conformément à l'article 76.1(2) du Règlement, avis aussi reçu de :

M^{me} Mathyssen (London—Fanshawe), M. Sandhu (Surrey-Nord), M. Julian (Burnaby—New Westminster) et M^{me} May (Saanich—Gulf Islands) — 13 mai 2015

Motion n° 4 — 13 mai 2015 — M^{me} May (Saanich—Gulf Islands) — Que le projet de loi S-7 soit modifié par suppression de l'article 3.

Motion n° 5 — 13 mai 2015 — M^{me} May (Saanich—Gulf Islands) — Que le projet de loi S-7 soit modifié par suppression de l'article 4.

Motion n° 6 — 13 mai 2015 — M^{me} May (Saanich—Gulf Islands) — Que le projet de loi S-7 soit modifié par suppression de l'article 5.

Motion n° 7 — 13 mai 2015 — M^{me} May (Saanich—Gulf Islands) — Que le projet de loi S-7 soit modifié par suppression de l'article 6.

Motion n° 8 — 13 mai 2015 — M^{me} Blanchette-Lamothé (Pierrefonds—Dollard) — Que le projet de loi S-7 soit modifié par suppression de l'article 7.

Conformément à l'article 76.1(2) du Règlement, avis aussi reçu de :

M^{me} Mathyssen (London—Fanshawe), M. Sandhu (Surrey-Nord), M. Julian (Burnaby—New Westminster) et M^{me} May (Saanich—Gulf Islands) — 13 mai 2015

Motion n° 9 — 13 mai 2015 — M^{me} May (Saanich—Gulf Islands) — Que le projet de loi S-7 soit modifié par suppression de l'article 8.

Motion n° 10 — 13 mai 2015 — M^{me} Blanchette-Lamothé (Pierrefonds—Dollard) — Que le projet de loi S-7 soit modifié par suppression de l'article 9.

Conformément à l'article 76.1(2) du Règlement, avis aussi reçu de :

M^{me} Mathyssen (London—Fanshawe), M. Sandhu (Surrey-Nord), M. Julian (Burnaby—New Westminster) et M^{me} May (Saanich—Gulf Islands) — 13 mai 2015

Westminster) and Ms. May (Saanich—Gulf Islands) —
May 13, 2015

et M^{me} May (Saanich—Gulf Islands) — 13 mai 2015

Motion No. 11 — May 13, 2015 — Ms. May (Saanich—Gulf Islands) — That Bill S-7 be amended by deleting Clause 10.

Motion n° 11 — 13 mai 2015 — M^{me} May (Saanich—Gulf Islands) — Que le projet de loi S-7 soit modifié par suppression de l'article 10.

Motion No. 12 — May 13, 2015 — Ms. May (Saanich—Gulf Islands) — That Bill S-7 be amended by deleting Clause 11.

Motion n° 12 — 13 mai 2015 — M^{me} May (Saanich—Gulf Islands) — Que le projet de loi S-7 soit modifié par suppression de l'article 11.

Motion No. 13 — May 13, 2015 — Ms. May (Saanich—Gulf Islands) — That Bill S-7 be amended by deleting Clause 12.

Motion n° 13 — 13 mai 2015 — M^{me} May (Saanich—Gulf Islands) — Que le projet de loi S-7 soit modifié par suppression de l'article 12.

Motion No. 14 — May 13, 2015 — Ms. May (Saanich—Gulf Islands) — That Bill S-7 be amended by deleting Clause 13.

Motion n° 14 — 13 mai 2015 — M^{me} May (Saanich—Gulf Islands) — Que le projet de loi S-7 soit modifié par suppression de l'article 13.

Motion No. 15 — May 13, 2015 — Ms. May (Saanich—Gulf Islands) — That Bill S-7 be amended by deleting Clause 14.

Motion n° 15 — 13 mai 2015 — M^{me} May (Saanich—Gulf Islands) — Que le projet de loi S-7 soit modifié par suppression de l'article 14.

Motion No. 16 — May 13, 2015 — Ms. May (Saanich—Gulf Islands) — That Bill S-7 be amended by deleting Clause 15.

Motion n° 16 — 13 mai 2015 — M^{me} May (Saanich—Gulf Islands) — Que le projet de loi S-7 soit modifié par suppression de l'article 15.

Motion No. 17 — May 13, 2015 — Ms. May (Saanich—Gulf Islands) — That Bill S-7 be amended by deleting Clause 16.

Thanks,

Derek Carson

Analyst | Analyste

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Government of Canada | Gouvernement du Canada



MEMORANDUM / NOTE DE SERVICE

Security classification – Cote de sécurité
File Number – Numéro de dossier
Date (Y-A / M / D-J) 2015-05-25
Telephone / Fax – Téléphone / Télécopieur 613-219-1880

TO / DEST. : Deputy Minister's Office

FROM / ORIG. : Derek Carson, Analyst, Cabinet and Parliamentary Affairs Unit

SUBJECT / OBJET : Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*: Analysis and Talking Points for Report Stage Amendments

Please find attached for your review and approval, the analysis talking points on the Report Stage Amendments (tabled thus far) for Bill S-7 (gray highlighted text is under the purview of Citizenship and Immigration Canada – Amendments 1 through 4).

Bill S-7 is scheduled to be debated at Report Stage on Thursday, May 28.

Citizenship and Immigration Canada have asked that we provide this document, MO-approved, by noon today (Monday, May 25).

This document was approved by SADMO.

Thanks very much.

House of Commons

Bill S-7: An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act

Third Reading

Comparison with like-minded countries

Speech # 1 (20 Minutes)

May 2015

Mr. Speaker, I would like to thank you for the opportunity to speak in support of Bill S-7, *An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act*.

In October 2013, this Government committed to ensuring that early and forced marriage do not take place on Canadian soil.

Mr. Speaker, Bill S-7 delivers on that promise. This Bill proposes to amend the *Immigration and Refugee Protection Act*, the *Civil Marriage Act* and the *Criminal Code* in order to enhance the existing protections against harmful and violent practices that are perpetrated primarily against women and girls.

I would like to take this opportunity, Mr. Speaker, to situate this Bill in the context of the array of measures that this

Government has taken to address violence against women and girls in Canada.

As Minister Alexander explained before the Senate Committee on Human Rights, all violent acts committed against women and girls are unacceptable in a democratic Canada. The Government has and continues to take action to address various forms of violence against women and girls. Allow me to provide a few examples.

Canada's criminal laws include substantive, procedural, and sentencing measures that, taken together, provide a comprehensive response to violence against women and girls. Testimonial aids and other protective tools make it easier for women and girls who have experienced violence to meaningfully participate in the criminal justice system. Moreover, courts are instructed to treat offences more seriously for sentencing purposes where there is evidence

that the crimes were motivated by age or sex or where the offence involved abuse of a position of trust.

This Government has pursued a robust criminal law reform agenda to strengthen the criminal law's response to all forms of violence, including violence against women. This has included: increasing penalties for child sexual assault; targeting the exploitation inherent in prostitution; and strengthening our responses to child sexual abuse.

Bill S-7 supplements Canada's robust responses to violence against women and girls by addressing some areas where gaps have been identified—such as the response to early and forced marriage—and strengthens the legislative tools in relation to other forms of gender-based violence, such as polygamy, so-called “honour” killings, and spousal homicides.

This Bill addresses certain forms of violence against women and girls that reflect antiquated notions of women as property or as mere vessels of family honour and reputation. These notions are clearly inconsistent with fundamental Canadian values of equality between men and women.

Mr. Speaker, Bill S-7 introduces important legislative measures that would protect potential and actual victims of early and forced marriage.

Bill S-7 proposes to set the absolute minimum age of marriage at 16 in the *Civil Marriage Act*, and codify in that same Act the requirements that a marriage involve free and enlightened consent and that all previous marriages be dissolved prior to entering into a new marriage.

This Bill also introduces changes to the *Criminal Code* to criminalize active participation in an underage or forced

marriage, and to criminalize removing a child from Canada for these same harmful purposes. Moreover, Bill S-7 expands the peace bond regime in the *Criminal Code* to provide for a new court order designed to prevent an underage or forced marriage from taking place in Canada or to prevent a child from being taken out of the country to be forced into a marriage.

In addition, Bill S-7 proposes to limit the defence of provocation in the *Criminal Code* so that it could not be raised in cases involving so-called "honour" killings and in many spousal homicides, where the alleged provocation often consists of verbal or offensive but otherwise lawful behaviour.

Finally, this Bill puts forward important changes to the *Immigration and Refugee Protection Act* which would specify

that a permanent resident or foreign national is inadmissible if they practise polygamy in Canada.

Mr. Speaker, I would like to take a few moments to point out how the proposed amendments in this Bill align Canada with many like-minded countries around the world.

Firstly, in relation to early marriage, Bill S-7 introduces a minimum age of 16 below which marriages may no longer be legally conducted in Canada, even with parental or court consent. There has been some misunderstanding about this provision of the Bill. Let me be perfectly clear, the “free age” of marriage in Canada—or the age at which a child becomes an adult and can give consent to marry on their own with no additional requirements—is 18 or 19 years of age, depending on the Province or Territory where the marriage takes place. Bill S-7 is not changing this.

Instead, Bill S-7 proposes to legislate in relation to the absolute minimum age of legal capacity for marriage, which is a matter of federal jurisdiction under the Constitution. Currently, federal law sets age 16 as the lowest age for marriage only in the Province of Quebec. Elsewhere in Canada, as there is no federal legislation, the old pre-Confederation common law applies. This Bill proposes to close that loophole and set a national floor at 16, below which marriages may not be legally conducted.

If we compare Canada with similarly-situated countries, many have set the lowest age for anyone to marry at age 16, including the United Kingdom, Australia, New Zealand, Austria, Finland, Germany, Italy, and Norway. This is what Bill S-7 proposes to do.

Several other like-minded countries have set 18 as the age at which a person can marry without the requirement for

consent from their parents or the courts. These countries have no absolute minimum age of marriage—countries such as Belgium, France, Iceland, Ireland, the Netherlands, Spain, Sweden and most of the United States. This is similar to the current law in Canada.

It's important to point out that many countries that are cited as setting the minimum age for marriage at age 18 actually have a similar legal structure to that of Canada. They set age 18 as the “free age”, or the age of majority, meaning that the person can marry without any other person's consent. This is subject to a number of exceptions where a person below the age of 18 can marry with some form of additional consent or approval; so it does not represent the absolute minimum age. In fact, very few countries have set their lowest age for anyone to marry at age 18. Switzerland is the only similarly-situated country that we are aware of to have done so.

Mr. Speaker, I would like to turn now to the proposed new *Criminal Code* offences of active participation in an underage or forced marriage ceremony. There has been significant debate over how best to address the issue of forced marriage and whether a criminal law provision will make reporting more difficult. Nonetheless, many international organizations, including the Council of Europe and the United Nations, have been calling upon states to specifically criminalize forced marriage. For example, UN Women, the United Nations entity for gender equality and the empowerment of women, recommends that “[l]egislation should criminalize forced marriage, and should acknowledge that any child marriage is by definition a forced marriage.”

Mr. Speaker, this is exactly what Bill S-7 proposes to do with the new offences of forced and underage marriages.

Moreover, at least eleven similarly-situated countries have introduced criminal offences in relation to forced marriage

over the past decade or so. The following countries have enacted forced marriage offences with maximum penalties ranging from two to seven years of imprisonment: the United Kingdom, Sweden, Australia, Switzerland, France, the Netherlands, Germany, Denmark, Belgium, Austria and Norway.

With the passage of Bill S-7, Canada will join the growing list of like-minded countries criminalizing forced marriage. Moreover, the proposed maximum sentence of imprisonment of five years lies within the average range of penalties.

Now some have claimed that these offences have had no impact because there have been few convictions. Well, Mr. Speaker, I completely disagree for several reasons.

First of all, as the RCMP pointed out in their written submission to the Citizenship and Immigration Committee,

the criminal law is not only about punishing violations of agreed upon social codes of conduct, it also serves to clearly establish the limits of acceptable social conduct. The criminalization of forced marriage has a symbolic function—it sends out a public message that forced marriage is socially unacceptable.

Second, a specific criminal offence of forced marriage can empower victims by allowing them to clearly articulate that it is a crime to force them to marry against their will. In fact, this point was raised in the testimony of Ms. Lee Marsh, one of the Committee's witnesses and a victim of a forced marriage, who indicated that if she had known that forced marriage was against the law, she might have been able to refuse the marriage.

Third, enhancing victim awareness of their rights can lead to an increase in reporting, both to the police and to victim

service agencies. For example, a Copenhagen-based organization, LOKK, reported a surge in victims coming forward to seek help after Denmark criminalized forced marriage. The threat of criminal sanction, coupled with awareness-raising and prevention measures, can help reduce these practices, rather than drive them underground.

Fourth, forced marriage constitutes a distinct violation of the human rights of the victim that is of sufficient gravity that it should be considered as a crime separate from existing criminal offences. The proposed new offence in Bill S-7 focusses on the point where the harm of forcing someone into an unwanted marriage crystalizes—namely, the marriage ceremony itself. It addresses the unique harm associated with community endorsement of the creation of an unwanted legal bond within which sexual assaults are expected to occur. This new offence is also required because forced marriage is not a sub-category of existing general offences.

Fifth, a specific criminal offence will permit victims and the authorities to prevent the forced marriage ceremony from taking place by using the preventive aspect of the criminal law. Bill S-7 is structured precisely so that victims can benefit from the specific forced and underage peace bonds to prevent the ceremony from taking place. Moreover, Bill S-7 provides law enforcement with the tools to stop the removal of a child from Canada for a forced or underage marriage abroad.

Finally, the criminalization of forced marriage serves to dissuade and deter people from violating the fundamental rights of the victim. As many families who force their children into unwanted marriages may otherwise be law-abiding, the existence of these specific offences may be sufficient to dissuade them from proceeding with the forced or underage marriage ceremony.

Mr. Speaker, I would like to take a minute to address a couple misconceptions in regard to the proposed offences of underage and forced marriages in Bill S-7.

The first misconception is that the Bill bans individuals in a forced marriage from immigrating to Canada. This is not at all the case. The proposed new offences in the *Criminal Code* apply to all persons in Canada. Forced marriage is a Canadian problem. In fact, Mr. Speaker, according to the South Asian Legal Clinic of Ontario's report on forced marriage, 85% of the 219 cases identified involved victims who were either Canadian citizens or permanent residents. This Bill aims to protect these victims from being forced into a marriage they do not desire.

The second misunderstanding I would like to address relates to the breadth of the proposed criminal offence of

participating in a forced marriage ceremony. The proposed offence would not criminalize mere passive attendance by a community member or relative at a forced marriage ceremony. The Supreme Court of Canada in *Dunlop and Sylvestre* established that:

“Mere presence at the scene of a crime is not sufficient to ground culpability. Something more is needed: encouragement of the principal offender; an act which facilitates the commission of the offence, such as keeping watch on enticing the victim away, or an act which tends to prevent or hinder interference with accomplishment of the criminal act, such as preventing the intended victim from escaping or being ready to assist the prime culprit.”

In accordance with general and longstanding principles of criminal law, which Canadians can have confidence will be

invoked by the courts when they interpret these offences, the proposed criminal offence requires active participation in the ceremony, such as acting as a signatory witness, driving an unwilling bride to the ceremony or restraining that individual so that they do not flee. In addition, this has to be coupled with actual knowledge that one of the parties to the marriage is marrying against their will or is under the age of 16. Mere suspicion or speculation that the marriage is forced or underage would not be sufficient to trigger criminal liability.

Mr. Speaker, I would like to end my speech today by saying a few words about the proposed amendments to the defence of provocation in the *Criminal Code*.

The defence of provocation applies only in cases where murder is actually proven. If successful, it results in a verdict of manslaughter—which has no mandatory minimum

sentence—instead of murder, which carries a mandatory sentence of life in prison and strict parole ineligibility rules.

Currently, the defence will be successful where the murder was committed in response to a “wrongful act or insult” from the victim that would be sufficient to “deprive an ordinary person of the power of self-control”, and where the accused acted suddenly “before there was time for his passion to cool.”

Provocation can be established even where the victim’s conduct was perfectly lawful. The defence is, in fact, raised in cases of spousal homicide against women where the alleged provocation was lawful conduct such as leaving a relationship or insulting the perpetrator’s virility.

Historically, the provocation defence was the original “honour defence” in our common law tradition. It was limited

to certain categories of conduct related to men defending their honour, such as finding another man committing adultery with his wife, which was viewed as the “highest invasion of property.”

The defence has been criticized for decades for excusing male violence against women on the basis of outdated notions that have no place in contemporary Canadian society.

The proposed amendment in Bill S-7 would limit provocation so that it could only be raised where the alleged provoking conduct by the victim would amount to an offence punishable by five years in prison or more.

In proposing to amend the defence of provocation, Canada is following the example of a number of similarly-situated countries. New Zealand and three Australian states have

entirely abolished the provocation defence. Most other Australian states and the United Kingdom have limited the provocation defence in the past decade. In fact, in 2014, the Australian state of New South Wales made several reforms to its provocation defence, including limiting its scope to provoking conduct that would be a relatively serious criminal offence. The same approach is proposed in Bill S-7.

Mr. Speaker, in my view it is entirely appropriate that Canada amend a defence that originates from a time when women were the legal property of their husbands and when the defence gave men latitude to kill in response to conduct that insulted their personal sense of honour.

Mr. Speaker, Bill S-7 addresses certain gaps in the range of existing measures to prevent and eliminate violence against women and girls in Canada. I urge my colleagues to support this Bill and align Canada with like-minded countries who are

grappling with similar forms of violence against women and girls.

House of Commons

Bill S-7: An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act

Third Reading

Protecting Children from Forced or Underage Marriages

Speech #2 (10 Minutes)

May 2015

Mr. Speaker this Government is committed to the well-being of Canada's children and youth and that is why it is my pleasure to speak on the Third Reading of Bill S-7, An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act.

I would like to take this opportunity to highlight the provisions of the Bill that are designed to protect Canadian children from early and forced marriage.

Mr. Speaker, although we lack national statistics on the incidence of early and forced marriage among children in Canada, because these practices are kept hidden, there are indications that children in Canada are subjected to these acts. According to the South Asian Clinic of Ontario's study on forced marriages in Ontario between 2010 and 2012: 10% of the 219 victims identified were between the ages of 12 and 15; and 25% were between the ages of 16 and 18.

International studies have shown that girls are predominately the victims of a child marriage, increasing their risk of violence, complications in childbirth and creating a significant barrier to achieving gender equality as they are regularly forced to disrupt or abandon their education.

Mr. Speaker, a number of witnesses testified during the Citizenship and Immigration Committee hearings about the very disturbing cases of girls in Canada who had been forced to marry or taken abroad to get married, despite their young age or their lack of consent. In some instances, young girls are tricked into leaving the country for a wedding ceremony of a relative, only to discover that the wedding is their own.

While there are currently some legislative tools available in Canada to prevent and respond to underage and forced

marriages of children, there are some significant gaps in the law that Bill S-7 aims to fill.

Firstly, there is currently no national minimum age below which children are not legally capable to consenting to a marriage. In Canada, the “free age” of marriage—or the age at which a child becomes an adult and can give consent to marry on their own with no additional requirements—is 18 or 19 years of age, depending on the Province or Territory where the marriage takes place. All provincial and territorial Marriage Acts set out additional requirements for minors to marry, such as parental consent, a court order, or proof of pregnancy.

Under the Constitution, setting the absolute minimum age for marriage is a matter of federal jurisdiction. However, apart from federal legislation that sets a minimum age of 16 years for marriages in Quebec, the minimum age elsewhere in

Canada is set out in the common law, or court decisions.

This old common law sets the minimum age at 14 for boys and 12 for girls. There is no clear minimum age across the country setting the absolute minimum age.

Mr. Speaker, Bill S-7 will enact changes to the *Civil Marriage Act* that will effectively prevent all marriages under the age of 16 from occurring anywhere in Canada. This will close the current legislative gap and set a national minimum age for marriage across Canada, consistent with countries such as the United Kingdom, Australia and New Zealand. Further, by making all children under age 16 legally incapable of consenting to marriage, Bill S-7 also ensures that if a child is taken out of Canada and married in a country where such child marriages are legal, upon the child's return to Canada, the underage marriage will be voidable because the child lacked the legal capacity to marry.

Bill S-7 will amend the *Criminal Code* to provide criminal protections against underage and forced marriages. The new provisions are directed to the public sanctioning of an underage and forced marriage ceremony, which creates an unwanted and harmful legal bond within which sexual offences are expected to occur. The two new offences criminalize conduct related to knowingly officiating, or knowingly and actively participating in a marriage ceremony where one or both of the spouses is either under the age of 16 or marrying against their will.

While a person will not be prosecuted for just being a guest at the wedding, those who conduct the marriage ceremony and those, including family members, who actively engage in conduct directed at facilitating the underage or forced marriage ceremony with full knowledge that one party is underage or marrying against their will, may be criminally

liable. In keeping with the objective of the criminal law to deter people from committing crimes, these new provisions send a clear and important message about the need for all Canadians to reject the misguided belief that any underage or forced marriage can be in a child's best interest.

Bill S-7 also makes it an offence to remove a child from Canada for the purposes of a forced or underage marriage ceremony outside of Canada. It builds on an existing provision in the *Criminal Code* that makes it an offence to remove a child for the purposes of committing certain crimes, such as child sexual offences and female genital mutilation. Bill S-7 will add the new offences related to officiating or actively participating in an underage or forced marriage ceremony to the list of offences in the existing provision.

This will effectively punish those who attempt to, or who do remove a child from Canada for the purposes of an underage or forced marriage ceremony abroad. It should also serve to prevent these removals from taking place at all because it allows officials to intervene before the child leaves the country. Without this amendment, the current law would require authorities to have evidence that a sexual offence was intended to be committed abroad following the marriage. With the amendment, evidence of an intended forced or early marriage would enable preventive measures to be taken.

I want to take this opportunity, Mr. Speaker, to respond to comments that I have heard many times about how child victims of forced marriages are reluctant to contact the authorities prior to the marriage because they do not want their parents or other relatives prosecuted. The *Criminal Code* amendments in Bill S-7 that I have just noted provide the foundation for a very important prevention measure.

Bill S-7 provides for specific forced or underage marriage peace bonds which will provide courts with the power to impose conditions on an individual when there are reasonable grounds to fear that a forced or underage marriage will otherwise occur. For example, an order under the new peace bond provision could prevent a victim from being taken out of Canada or require the surrender of a passport.

These peace bonds are available to victims who want protection but do not want their parents or other relatives prosecuted. People subjected to peace bonds are not charged with a criminal offence unless they breach the conditions of the order. It is important to point out that a third party such as a social worker, police officer or a relative can intervene to request the peace bond on the child's behalf.

Finally, Mr. Speaker, I am aware that the provisions respecting early and forced marriage in Bill S-7 have been criticized as being technically unnecessary and already covered in Canadian law. I don't understand this criticism at all. If amendments to federal laws are necessary to clarify that early and forced marriage is incompatible with Canadian values, and that they represent a distinct wrong from assault and forcible confinement, for example, it is critical that these amendments be made. It is important that everyone know and understand that that this conduct is illegal because it is the most vulnerable in our society, our children, who suffer serious harm when forced, usually by their family members, to marry underage or against their will. How can we not do everything possible to stop this?

I am proud to support Bill S-7 and I urge my colleagues to do the same.

House of Commons

***Bill S-7: An Act to amend the Immigration and Refugee
Protection Act, the Civil Marriage Act and the Criminal Code
and to make consequential amendments to other Acts***

Third Reading

Broader Measures to Prevent Early and Forced Marriage

Speech #3 (10 Minutes)

May 2015

Mr. Speaker, I am pleased to have the opportunity once again to speak on Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*.

It is very important to take a strong stance to ensure that no woman or girl in Canada becomes a victim of any violent practice that violates basic human rights. These practices are not acceptable in Canadian society and Bill S-7 sends this as a clear message to all Canadians and to those coming to Canada.

Bill S-7 strengthens the laws in Canada through amendments to the *Immigration and Refugee Protection Act*, the *Civil Marriage Act* and the *Criminal Code*.

Mr. Speaker, we've had the benefit of hearing from a number of experts in the field during the Citizenship and Immigration Committee hearings. Some have criticized the Bill, others

have been in full support. All, however, agree that combatting violence against women and girls is an important and laudable goal.

Mr. Speaker, I would like to paraphrase one of the witnesses before the Committee, Ms. Chantal Desloges, an immigration lawyer, who said very aptly that this Bill sends a concrete statement about Canadian values..

Mr. Speaker, within Canada, there is no room for a culture of violence against women and girls. Mr. Speaker, I believe that where there are gaps in legislation that have allowed perpetrators to abuse those very people who count on them for protection, or that have prevented victims from getting help, it is our responsibility to ensure that those gaps are closed.

Mr. Speaker, among other things, this Bill proposes to fill gaps that have been identified with regard to early and forced marriage. These are deplorable practices which principally victimize young women and are often carried out by their own parents or other family members.

If you permit me, Mr. Speaker, I will paraphrase from another witness before Committee, Ms. Lee Marsh, a victim herself of a forced marriage, who testified that if she had known that what her mother was doing was against the law, she might have felt better equipped to refuse the marriage. Ms. Marsh also told the committee that this Bill in isolation is not enough to combat these practices.

Mr. Speaker, we agree. This Bill provides solid ground to give tools to law enforcement and front line service providers to bring perpetrators to justice and to protect victims. In

addition to the legislation, people need to be aware of Canadian laws and values. We are not ignoring the importance of raising awareness, or training and resources, nor are we overlooking the importance of working together with our provincial and territorial counterparts and community partners in the field.

Our Government, through various departments, has been working diligently for years with many different stakeholders on these very issues. Just to give a few examples Mr. Speaker, Justice Canada and Status of Women Canada have provided funding to a number of non-governmental organizations to conduct awareness raising and training on honour based violence and forced marriages. Justice Canada contributed funding for the development of a high school curriculum that will teach students about human rights including about early and forced marriages.

Over the years, Justice Canada has organized workshops with front line workers across the country, including child protection workers, shelter workers, community-based workers, police officers and Crown prosecutors, to share expertise, create networks, and discuss risk assessments and appropriate services for victims of these horrendous acts. Justice Canada and Status of Women Canada co-chair an interdepartmental working group on early and forced marriage, honour based violence and female genital mutilation. This working group is creating a federal-provincial-territorial working group on these same issues.

Justice Canada has published public legal education and information materials on family violence that include information on early and forced marriages, honour based violence and female genital mutilation. Justice Canada and the RCMP have also created training materials for police

officers on these issues as part of their domestic violence training. This training will be updated to reflect the changes in Bill S-7.

As I have demonstrated Mr. Speaker, there are many layers to the Government of Canada's approach to tackling these issues. The Bill is but one aspect of the ongoing and collaborative efforts being undertaken by this Government to address these disturbing issues. It is an integral and necessary part of the Government's multi-faceted approach to tackling these issues, which includes prevention, denunciation, awareness-raising, training, consultation and collaboration.

Some critics of the Bill are nervous that by criminalizing these forms of violence we risk stigmatizing people who are already vulnerable. Mr. Speaker, we believe that it is imperative to recognize that these forms of violence exist

and to address and denounce them. We need to send clear messages to victims that they have a right of refusal and we need to let potential perpetrators know that forced marriage is a crime.

It is not acceptable to turn a blind eye to child abuse or spousal assault just because it happens behind closed doors. Similarly, we should not shy away from denouncing early and forced marriage as forms of family violence that will not be tolerated in our society.

Some critics say that this Bill introduced amendments that are redundant and that existing *Criminal Code* provisions are sufficient to address abuses that happen in a forced marriage context.

Mr. Speaker, let me be clear, the specific harm associated with compelling a person to marry against their will is not

currently covered by *Criminal Code*. Existing general offences may be used to capture some, but not all, of the conduct used to compel a person to marry against their will. This new offence would cover conduct such as extreme pressure and emotional coercion used to compel another person to marry, where the perpetrator takes an active role in ensuring the marriage ceremony takes place with full knowledge that the victim is marrying against their will. The new offence addresses the specific harm associated with community endorsement of the creation of an unwanted legal bond within which sexual assaults are expected to occur.

Some critics have raised concerns that victims will not want to criminalize their family members. This same concern has also been raised in the past with regard to spousal violence, and child abuse. Yet, no one is suggesting that a violent assault is less criminal because it is perpetrated in the context of a family relationship, even if the victim does not

wish to see their parent or spouse prosecuted for the violence.

I would like to quote Megan Walker from the London Abused Women's Centre, located in London (Ontario), with respect to the forced marriage issue, and specifically about a child reporting her parents to the police if it was criminalized. She said the following during the study at the Senate:

“This was also a concern when we started to talk about women abuse and domestic violence — that women would not report because of fear. It was also a concern when we talked about children who were being sexually abused by their parents. We need to recognize that if we don't have criminal legislation to enforce those things, then we have police officers who arrive at the door and say, "I'm really sorry, but there is nothing I can do for you." Criminal sanctions are needed in these cases.

With respect to the reconciliation, we have many children who have reported sexual assaults against their parents and those parents have been criminally sanctioned, and yet down the road we are able to work towards reconciliation. I do believe that imposing criminal sanctions is the best way to end the exploitation of women and girls, especially in forced marriage.”

Some critics have raised concerns about the use of the word culture. Once again Mr. Speaker, the culture we are condemning is the culture of violence against women and girls.

I am very proud that this Government is sending a strong message to Canadian society and to the world that Canada will not tolerate violence against women and girls.

I encourage all Members to give Bill S-7 their full support.

House of Commons

***Bill S-7: An Act to amend the Immigration and Refugee
Protection Act, the Civil Marriage Act and the Criminal Code
and to make consequential amendments to other Acts***

Third Reading/Report Stage

Provocation

Speech #4 (10 minutes)

May 2015

Mr. Speaker, I am pleased to have the opportunity today to speak on Bill S-7, An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts.

Bill S-7 aims to ensure that early and forced marriage and other harmful cultural practices, such as polygamous marriages and so-called “honour” based violence, do not occur on Canadian soil. It would do so by amending the *Civil Marriage Act*, the *Immigration and Refugee Protection Act*, and the *Criminal Code*.

Today I would like to speak to the proposed amendment to the *Criminal Code* defence of provocation. The provocation defence applies only to a murder charge, and when successful, it reduces a murder charge down to

manslaughter, thereby giving rise to wide judicial discretion in sentencing, and in most cases, to significantly lower sentences than if the person had been convicted of murder.

The proposed amendment would limit the defence so that it only applies where a person killed in response to provoking conduct by the victim that was objectively serious and contrary to the norms of behaviour set down for all of society. More specifically, the provocation by the victim would have to amount to a criminal offence with a maximum sentence of at least 5 years. The defence would continue to be available where a person loses control and kills someone suddenly upon finding them assaulting or abusing a family member or committing any number of other serious criminal offences.

The amendment is intended to stop the defence from being raised not only in honour-killing cases, but also, from being

raised in spousal killing situations, where it is still sometimes successful. These are situations where people who kill will often claim to have done so in response to some lawful, albeit insulting, conduct by the victim.

The reform responds to two decades of criticism that the defence of provocation in these cases operates to excuse male violence against women and to re-affirm men's beliefs that they are entitled to possess and control women, regardless of what those women want.

This of course, is a very similar dynamic to what is seen in honour-killing cases, where men—whether it be a father, husband or brother but sometimes also women—seek to kill women or girls in their families when they make their own choices about how to behave that are in conflict with the wishes of other family members.

Many of the commentators who testified before the Committee said that the proposed provocation reforms were unnecessary because the courts have already made clear that provocation is not available in an honour killing context.

Even if the courts are in the process of narrowing the scope of the provocation defence, this begs the question: why are the courts rather than Parliament addressing problems with the law? It is Parliament's job to make law and correct legal problems. Bill S-7 is Parliament's opportunity to change the law to say that murder is not less serious just because the victim offended the killer in the moments before the killing.

Critics of this proposal also ignore the fact that our Government has said on many occasions that this proposed reform is also meant to address spousal killings that are not characterized as "honour killings". Many who claim the defence of provocation are men who have killed their current

or former partners because the relationship ended, because there was infidelity or verbal insults about sexual performance and the like. It is true that these claims are becoming less and less successful in Canadian courts, but nonetheless such claims do sometimes succeed. None of the witnesses who criticized this amendment addressed the fact that men in Canada do still sometimes benefit from the provocation defence when they kill their current or former partners.

Instead, the critics talked only about cases in which provocation claims failed where the circumstances were characterized as "honour killings". They seem to agree that victims of honour killings must be treated as murder victims and those who kill them as murderers, yet they do not appear to be concerned that victims of domestic killings that are not "honour killing" may receive a different quality of justice, and are instead sometimes treated as victims of the lesser crime

of manslaughter. Their killers are back on the streets within a few years in some cases.

Our Government believes all persons who kill their partners in response to lawful, albeit insulting, behaviour should be convicted of murder. We also believe that it is Parliament's job to make this happen by changing the law to accord with this value. It is not enough to sit back and hope that the courts will do the right thing on a case-by-case basis.

In any case, it is simply not true that the courts have ruled definitively in this area. The British Columbia Court of Appeal in the case of *Nahar* (2004 B.C. Court of Appeal) actually found that the cultural background of the accused was relevant to his provocation claim. This case remains binding authority in British Columbia, which means that cultural claims can be accepted in the context of the provocation defence.

Many commentators have suggested that the Ontario Court of Appeal decision in the case of *Humaid* definitively rules out the provocation defence in honour killing cases. In that ruling, the Ontario Court of Appeal made clear that the defence failed because the Crown proved that the killing was premeditated, and so it was not “on the sudden” and therefore was not provoked. Having found that the appeal was resolved on the ground that the Crown proved premeditation, the Court said it did not have to resolve the issue about whether the accused’s cultural beliefs were relevant to provocation. The Court discussed what the considerations would be in resolving that issue, but expressly stated: “The resolution of this difficult issue awaits a case in which it must be resolved.” (Ontario Court of Appeal in *R. v. Humaid*, [2006] O.J. No. 1507 para. 94).

Where does all this leave us? It is wishful thinking and legally inaccurate to state that provocation cannot, as a matter of law, be raised by an accused who is alleged to have killed in an honour-killing context. It is true that provocation claims in honour-killing cases are likely to be rejected by judges and juries, but the critics are incorrect when they suggest that the defence cannot even be raised or considered. These claims will be made again, and they will produce more appeals, which will cost the justice system more time and energy, and which will bring more pain to the families of the victims who have to face longer trials and appeals. We, as legislators, can stop that from happening by passing Bill S-7 and by declaring that no one is entitled to leniency for intentionally killing another because of any type of insult that is otherwise lawful.

Some critics are concerned about unintended consequences of limiting the provocation defence.. Scenarios involving

“racial slurs” were mentioned on a few occasions. In most such cases, both parties are drunk, both parties are insulting each other and in many cases, both parties are also assaulting or threatening each other—the latter of which is unlawful conduct. No cases were identified wherein a person who was minding their own business and was aggressively verbally assaulted with racial insults, was thus provoked to kill. This is a very unlikely occurrence.

There are risks of retaining provocation for racial insults. A 2013 case from Ontario involved a successful provocation defence by a man who brutally killed his wife in the context of a marriage breakdown (*Klimovich*). The accused alleged that his wife made a “racial slur”, the contents of which were not disclosed in the Court’s reasons. The accused was therefore convicted of manslaughter, not murder, and sentenced to serve only four years and four months

imprisonment, despite the sentencing judge finding the provocation to be of little mitigating value.

The danger of retaining provocation in order to show leniency to those who are racially insulted is that it can also apply in the context of a relationship breakdown, where people offer up insults in order to hurt each other emotionally with some regularity.

There are other safeguards built into our criminal justice system that should not be forgotten, in the event that there is an unforeseen but genuinely sympathetic set of circumstances for which the provocation defence would no longer apply. For example, the Crown could find that it is not in the public interest to prosecute that person for murder, and can accept a guilty plea to manslaughter without any need for the accused to raise the provocation defence.

To better protect the women and girls of this country, the time has come for Canada to bring the law of provocation out of the 17th century and into conformity with our modern values, as other like-minded nations have done. I hope that all Members will support this proposal and all other elements of Bill S-7.

House of Commons

***Bill S-7: An Act to amend the Immigration and Refugee
Protection Act, the Civil Marriage Act and the Criminal Code
and to make consequential amendments to other Acts***

Third Reading

**Correcting Two Misunderstandings: Minimum Age for
Marriage/Definition of Polygamy**

Speech #5 (10 Minutes)

May 2015

Mr. Speaker, I am pleased to rise today to speak on Bill S-7, An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts

I want to comment on two confusions that have arisen in the context of debate on this bill, and were also reflected in some of the testimony before the Committee.

Mr. Speaker, before I begin, I want to emphasize that we all very much appreciate the importance of the Committee process, and in particular, the many witnesses that take time out of their busy schedules, and make the effort to share their views and their expertise with the Committee during its study of bills. On some occasions, however, there is disagreement between witnesses who are experts, and from

time-to-time there may accidentally be confusion and inaccuracies introduced into the debate.

I want to briefly touch on two of those instances today: the first concerning the proposed minimum age for marriage; and the second about the definition of “practicing polygamy”.

Mr. Speaker, during the debate and in the testimony before the Committee there was considerable discussion about whether the bill should have set the minimum age for marriage even higher than 16 years of age, as is proposed, with some suggesting that age 18 would be more appropriate. One witness even suggested that the Government had not considered international norms that clearly showed that age 18 was the international standard and that the Bill deviated from that standard.

This is an area of significant confusion, Mr. Speaker. The United Nations does have a chart on their website with a list of countries and their minimum ages for marriage. The list, however, indicates that Canada's minimum age is 18. One may ask, how can that be?

Well, the list comprises the ages at which individuals can marry without additional consent, sometimes called the "independent marriage age". In Canada, this is the age of majority—either 18 or 19 depending on the province or territory of residence—at which an individual becomes an adult and can make decisions to marry by themselves. Under our Constitution, it is within provincial and territorial jurisdiction to make the determination of "independent marriage age".

So, one may further question, why does the Bill contain a reference to age 16? Under our Constitution, it is the

jurisdiction of the Parliament of Canada to determine the age below which no minor may legally marry, sometimes called the “absolute minimum age for marriage”. Right now, in Canadian law, federal legislation specifies that age 16 is the absolute minimum age for marriage only for the purposes of the law in the Province of Quebec. Elsewhere in Canada, because there is no federal legislation, the common law still applies and that is usually interpreted as an absolute minimum age for girls of 12 and for boys of 14.

It would be possible for federal legislation to raise the absolute minimum age for marriage to age 18, but that might have quite serious consequences for some young people. Once the absolute minimum age is set by federal law, there can be no exceptions. The Government chose instead to follow the recommendation of the Uniform Law Conference of Canada to set the age at 16 to balance protections for minors against avoiding a situation where mature minors

were banned from marrying, even for example where they wished to marry the parent of their common child. While fewer and fewer Canadians choose to marry at ages 16 and 17, there may still be situations where they are mature enough to understand the obligations and should be able to make that choice for their own futures.

It should also be noted that the new proposed forced marriage offence in the *Criminal Code* would act as a deterrent for parents who might attempt to force their 16 or 17 year old into a marriage under the guise of giving "parental consent".

Mr. Speaker, the other issue I wanted to touch on is concern that the Bill has no definition of "practising polygamy". One witness before the Committee referred to the decision of the British Columbia Supreme Court in the Polygamy Reference

case and suggested that it did not determine the meaning.

This is incorrect.

There was disagreement before the court on the correct interpretation of the *Criminal Code* polygamy offence, but Justice Bauman clearly indicated that polygamy is a form of marriage involving more than two people, and includes legal marriages, as well as “purported forms of marriage”, meaning religious marriages that are not recognized in law but where the parties believe they are bound together. He further accepted the Attorney General of Canada’s argument that “marriage” is a form of union that is dependent on an event—a ceremony of some kind—that sanctions a union of individuals. It is absolutely clear that polygamy does not include common-law relationships or other informal relationships, such as polyamory or affairs.

All of the evidence presented demonstrated the harms, both to individuals and to society, of multi-party marriages. These harms of polygamy caused Justice Bauman to find the prohibition against polygamy constitutional.

Clear guidance with respect to the meaning of “practicing polygamy” will be provided to front-line immigration officials.

Another witness suggested that only the man is practicing polygamy because of his union with more than one spouse, but that the women in a polygamous union should not be included because their union is to only one spouse. This suggestion, while I'm sure well-meaning, defies logic.

Polygamy is not a series of marriages, each of which creates a family, in the way that serial monogamy might do. Rather, the whole point is that polygamy creates a single family unit which functions together, so that the “sister wives” also

have a relationship to one another, which entrenches gender inequality. If an individual leaves that relationship at any time and ceases to practice polygamy, then the inadmissibility would no longer apply to them. However, while they remain in the polygamous relationship, applying the inadmissibility to only the man would result in an illogical conclusion, in that the family—still practicing polygamy—would be split between borders.

The final point I wanted to make, Mr. Speaker, concerns another confusion. Some have suggested that a person who is married to someone and either doesn't know that that person is already married to someone else, or who is forced into that marriage, would be considered to be practicing polygamy. This is untrue. Under the *Criminal Code*, a person who has no actual knowledge that they are in a polygamous union, or a person who was forced into such a union, has not behaved in a morally blameworthy manner, which is the

cornerstone of the criminal law. If a person is unaware of relevant facts or has been compelled to act, they are not guilty of a criminal offence.

Mr. Speaker, Bill S-7 would protect young people from early marriages by enacting a new national absolute minimum age for marriage that would apply to all marriages performed in Canada, and to all marriages performed outside of Canada that involve young people ordinarily resident here. This is an important protection for all our young people. I have been told of instances where young people are excused from classes to be married by telephone at age 12 and 13. That would no longer be possible once this Bill receives Royal Assent.

This Bill would also give young people the ability to tell their parents that they cannot be forced to marry someone they don't want to marry because it's against the law. It would

give young people the ability to ask for a court order to take their passports from their parents if they are afraid they may be taken out of the country to marry.

These are important changes in the law to protect our young people until they are old enough to better know their own minds. Marriage is hard enough, and young married couples will face many challenges without adding to them the burden of marrying too young or marrying someone you don't wish to marry.

I hope all members of this House will join me in supporting this important Bill.

Savard, Angela

From: Stewart, Glenda
Sent: 2015-Jun-15 10:23 AM
To: [REDACTED]
Cc: Van Loon, Christina
Subject: here is a draft Communications Plan Bill S-7 s.19(1)

Hi [REDACTED] Further to my last e-mail, attached is a draft Communications Plan for the coming into force of S-7. It has been reviewed by folks in both Criminal Law Policy and Family Violence. It has not been reviewed by CIC yet. I will do that once I get your feedback.



Communications
Plan-June 12 re...

Coming into Force of Part 3 of the *Zero Tolerance for Barbaric Cultural Practices Act* (Bill S-7 *Criminal Code* amendments related to early and forced marriages and honour killings)

Communications Plan

Plan de communication

<p>1. COMMUNICATIONS OBJECTIVES</p> <ul style="list-style-type: none"> • To highlight the coming into force of <i>Criminal Code</i> measures related to early and forced marriage and honour killings in Bill S-7. • To send a clear message that gender-based violence, including early and forced marriage and honour killing, will not be tolerated in Canada. 	<p>1. OBJECTIFS DE COMMUNICATION</p>
<p>2. LINKS TO GOVERNMENT MESSAGES AND CAMPAIGNS</p> <p>This legislation supports the Government's commitment to protect Canadians. It also supports the commitment made in the 2013 Speech from the Throne to promote Canadian values by preventing early and forced marriage.</p>	<p>2. LIENS AVEC LES MESSAGES ET LES CAMPAGNES DU GOUVERNEMENT</p>
<p>3. STRATEGIC CONSIDERATIONS</p> <p>It needs to be made clear that even if someone takes a child from Canada to another country to be married, they can still be charged with an offence.</p> <p>To balance the perceived targeting of certain ethnic cultures in Canada, messaging should acknowledge the important contribution that new immigrants from all cultures have made to Canada.</p>	<p>3. CONSIDÉRATIONS STRATÉGIQUES</p>
<p>4. KEY MESSAGES</p> <p>No one should be forced to marry.</p> <p>No one should be able to get away with murder just because they felt insulted by the victim.</p> <p>Canada celebrates its cultural diversity, but certain cultural practices that particularly victimize vulnerable women and girls, including early and forced marriage and so-called "honour" killings, will not be tolerated in this country.</p> <p>This Government is committed to protecting Canadians from violence.</p> <p>As indicated in the 2013 Speech from the Throne, this commitment includes protecting vulnerable women and girls from early or forced marriage.</p> <p>The Government has followed through on that</p>	<p>4. MESSAGES CLÉS</p>

<p>commitment by bringing into force <i>Criminal Code</i> amendments brought about by Bill S-7, the <i>Zero Tolerance for Barbaric Cultural Practices Act</i></p> <p>This legislation not only holds perpetrators of offences involving early or forced marriage to account, but also provides tools to help protect Canadians from being forced into a marriage that they don't want.</p> <p>The amendments also make it clear that having been insulted is not a defence for murder.</p>	
<p>5. TARGET AUDIENCES</p> <ul style="list-style-type: none"> • Media and Canadian residents • International community • Law enforcement • Canada borders service agents • Legal community (Lawyers, prosecutors, judges) • Marriage officiates • Educators • Community services/women shelters 	<p>5. PUBLICS-CIBLES</p>
<p>6. COMMUNICATIONS APPROACH AND TACTICS</p> <p>A medium-profile communications approach is recommended. The Minister of Citizenship and Immigration will issue a news release announcing the coming into force. It will also be announced through social media (Twitter, Facebook). Information about the revised federal criminal laws related to early and forced marriage and the defence of provocation will be posted on the Government of Canada website. Other federal partners (DFATD, SWC, HC, CBSA, RCMP, PS) will be asked to help spread the word to key stakeholders (e.g. by retweeting the announcement to their followers.)</p>	<p>6. APPROCHE ET STRATÉGIES DES COMMUNICATIONS</p>
<p>7. BUDGET</p> <p>All communications costs will be absorbed into existing budgets.</p>	<p>7. BUDGET S.O.</p> <p>Tous les coûts liés aux communications seront payés à partir des budgets actuels.</p>
<p>8. DEPARTMENTAL COMMUNICATIONS CONTACT</p> <p>Citizenship and Immigration Canada : Andrea Asbil e-mail: Andrea.Asbil@cic.gc.ca Phone: 613-437-7612</p> <p>Justice Canada : Glenda Stewart</p>	<p>8. PERSONNE-RESSOURCE DES COMMUNICATIONS MINISTÉRIELLES</p>

e-mail: gstewart@justice.gc.ca Phone : 613-617-8340	
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Savard, Angela

From: Stewart, Glenda
Sent: 2015-Jun-15 10:48 AM
To: [REDACTED]
Subject: RE: Coming into force of S-7

I have tweaked it a bit to say Minister of CIC and/or Minister of Justice. Hopefully that will provide enough leeway.



Communications
Plan-June 12 re...

Glenda Stewart
Senior Communications Advisor / Conseillère principale en communications
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From: [REDACTED]
Sent: June-15-15 10:25 AM
To: Stewart, Glenda
Cc: Van Loon, Christina
Subject: RE: Coming into force of S-7

I believe the Minister may want a part of the announcement.
I know he is heavily interested in the issue.

s.19(1)

[REDACTED]

[REDACTED]

Office of the Minister of Justice and Attorney General of Canada / Cabinet du ministre de la Justice et procureur général du Canada

From: Stewart, Glenda
Sent: Monday, June 15, 2015 9:20 AM
To: [REDACTED]
Cc: Van Loon, Christina
Subject: Coming into force of S-7
Importance: High

s.19(1)

Hi [REDACTED] Have you had a chance to consider the approach you would like to take with the announcement of the coming into force of the provisions dealing with early and forced marriage (there is also a provision dealing with honour killings – i.e. that the defence of provocation does not include insults?) . i.e. do you want to leave the announcement up to Minister Alexander, or do you think our Minister should also play a role considering that it is our legislation that is coming into force. Our policy folks tell us that if we want any chance of presenting the order in council documents in time to bring it into force before the house rises, they need the communications plan as quickly as possible today. I have most of the communications plan completed, except for the communications approach. So if there is any way you can get back to me on this, (like you don't have 10 million other priorities☺) I would greatly appreciate it. I also have to pass it by CIC.

Glenda Stewart

Senior Communications Advisor/Conseillère principale en communications

Strategic Communications/Communications stratégiques

Communications Branch | Direction des Communications

Department of Justice / Ministère de la Justice

Ottawa, Canada K1A 0H8

Glenda.Stewart@justice.gc.ca

Telephone / Téléphone: 613-617-8340

Government of Canada / Gouvernement du Canada

Coming into Force of Part 3 of the *Zero Tolerance for Barbaric Cultural Practices Act* (Bill S-7 *Criminal Code* amendments related to early and forced marriages and honour killings)

Communications Plan

Plan de communication

<p>1. COMMUNICATIONS OBJECTIVES</p> <ul style="list-style-type: none"> • To highlight the coming into force of <i>Criminal Code</i> measures related to early and forced marriage and honour killings in Bill S-7. • To send a clear message that gender-based violence, including early and forced marriage and honour killing, will not be tolerated in Canada. 	<p>1. OBJECTIFS DE COMMUNICATION</p>
<p>2. LINKS TO GOVERNMENT MESSAGES AND CAMPAIGNS</p> <p>This legislation supports the Government's commitment to protect Canadians. It also supports the commitment made in the 2013 Speech from the Throne to promote Canadian values by preventing early and forced marriage.</p>	<p>2. LIENS AVEC LES MESSAGES ET LES CAMPAGNES DU GOUVERNEMENT</p>
<p>3. STRATEGIC CONSIDERATIONS</p> <p>It needs to be made clear that even if someone takes a child from Canada to another country to be married, they can still be charged with an offence.</p> <p>To balance the perceived targeting of certain ethnic cultures in Canada, messaging should acknowledge the important contribution that new immigrants from all cultures have made to Canada.</p>	<p>3. CONSIDÉRATIONS STRATÉGIQUES</p>
<p>4. KEY MESSAGES</p> <p>No one should be forced to marry.</p> <p>No one should be able to get away with murder just because they felt insulted by the victim.</p> <p>Canada celebrates its cultural diversity, but certain cultural practices that particularly victimize vulnerable women and girls, including early and forced marriage and so-called "honour" killings, will not be tolerated in this country.</p> <p>This Government is committed to protecting Canadians from violence.</p> <p>As indicated in the 2013 Speech from the Throne, this commitment includes protecting vulnerable women and girls from early or forced marriage.</p> <p>The Government has followed through on that</p>	<p>4. MESSAGES CLÉS</p>

<p>commitment by bringing into force <i>Criminal Code</i> amendments brought about by Bill S-7, the <i>Zero Tolerance for Barbaric Cultural Practices Act</i></p> <p>This legislation not only holds perpetrators of offences involving early or forced marriage to account, but also provides tools to help protect Canadians from being forced into a marriage that they don't want.</p> <p>The amendments also make it clear that having been insulted is not a defence for murder.</p>	
<p>5. TARGET AUDIENCES</p> <ul style="list-style-type: none"> • Media and Canadian residents • International community • Law enforcement • Canada borders service agents • Legal community (Lawyers, prosecutors, judges) • Marriage officiates • Educators • Community services/women shelters 	<p>5. PUBLICS-CIBLES</p>
<p>6. COMMUNICATIONS APPROACH AND TACTICS</p> <p>A medium-profile communications approach is recommended. The Minister of Citizenship and Immigration and/or the Minister of Justice will issue a news release announcing the coming into force. It will also be announced through social media (Twitter, Facebook). Information about the revised federal criminal laws related to early and forced marriage and the defence of provocation will be posted on the Government of Canada website. Other federal partners (DFATD, SWC, HC, CBSA, RCMP, PS) will be asked to help spread the word to key stakeholders (e.g. by retweeting the announcement to their followers.)</p>	<p>6. APPROCHE ET STRATÉGIES DES COMMUNICATIONS</p>
<p>7. BUDGET</p> <p>All communications costs will be absorbed into existing budgets.</p>	<p>7. BUDGET S.O.</p> <p>Tous les coûts liés aux communications seront payés à partir des budgets actuels.</p>
<p>8. DEPARTMENTAL COMMUNICATIONS CONTACT</p> <p>Citizenship and Immigration Canada : Andrea Asbil e-mail: Andrea.Asbil@cic.gc.ca Phone: 613-437-7612</p> <p>Justice Canada : Glenda Stewart e-mail: gstewart@justice.gc.ca Phone : 613-617-8340</p>	<p>8. PERSONNE-RESSOURCE DES COMMUNICATIONS MINISTÉRIELLES</p>

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Savard, Angela

From: Stewart, Glenda
Sent: 2015-Jun-15 11:58 AM
To: [REDACTED]
Cc: Van Loon, Christina
Subject: S-7 - Royal Assent announcement s.19(1)

Quite apart from when the provisions come into force, CIC plans to issue a news release when the Bill receives Royal Assent. They are willing to do a joint news release if Minister MacKay wants to be involved in the announcement.

Glenda Stewart
Senior Communications Advisor/Conseillère principale en communications
Strategic Communications/Communications stratégiques
Communications Branch | Direction des Communications
Department of Justice / Ministère de la Justice
Ottawa, Canada K1A 0H8
Glenda.Stewart@justice.gc.ca
Telephone / Téléphone: 613-617-8340
Government of Canada / Gouvernement du Canada

Savard, Angela

From: Stewart, Glenda
Sent: 2015-Jun-15 3:12 PM **s.19(1)**
To: [REDACTED]
Cc: Van Loon, Christina
Subject: Communications plan - coming into force of provisions in S-7
Importance: High

Hi [REDACTED] I revised the CP to reflect that it will likely come into force during the writ period. Please have a look at this revised version and let me know if you have any concerns. Thanks.



Communications
Plan-June 12 re...

Coming into Force of Part 3 of the *Zero Tolerance for Barbaric Cultural Practices Act* (Bill S-7 *Criminal Code* amendments related to early and forced marriages and honour killings)

Communications Plan

Plan de communication

<p>1. COMMUNICATIONS OBJECTIVES</p> <ul style="list-style-type: none"> • To highlight the coming into force of <i>Criminal Code</i> measures related to early and forced marriage and honour killings in Bill S-7. • To send a clear message that gender-based violence, including early and forced marriage and honour killing, will not be tolerated in Canada. 	<p>1. OBJECTIFS DE COMMUNICATION</p>
<p>2. LINKS TO GOVERNMENT MESSAGES AND CAMPAIGNS</p> <p>This legislation supports the Government's commitment to protect Canadians. It also supports the commitment made in the 2013 Speech from the Throne to promote Canadian values by preventing early and forced marriage.</p>	<p>2. LIENS AVEC LES MESSAGES ET LES CAMPAGNES DU GOUVERNEMENT</p>
<p>3. STRATEGIC CONSIDERATIONS</p> <p>The coming into force may occur during a writ period before the election, thus limiting the ability to announce and promote it during that period.</p> <p>In ongoing communications about the provisions, it needs to be made clear that even if someone takes a child from Canada to another country to be married, they can still be charged with an offence.</p> <p>To balance the perceived targeting of certain ethnic cultures in Canada, messaging should acknowledge the important contribution that new immigrants from all cultures have made to Canada.</p>	<p>3. CONSIDÉRATIONS STRATÉGIQUES</p>
<p>4. KEY MESSAGES</p> <p>No one should be forced to marry.</p> <p>No one should be able to get away with murder just because they felt insulted by the victim.</p> <p>Canada celebrates its cultural diversity, but certain cultural practices that particularly victimize vulnerable women and girls, including early and forced marriage and so-called "honour" killings, will not be tolerated in this country.</p> <p>This Government is committed to protecting Canadians from violence.</p>	<p>4. MESSAGES CLÉS</p>

<p>As indicated in the 2013 Speech from the Throne, this commitment includes protecting vulnerable women and girls from early or forced marriage.</p> <p>The Government has followed through on that commitment by bringing into force <i>Criminal Code</i> amendments brought about by Bill S-7, the <i>Zero Tolerance for Barbaric Cultural Practices Act</i></p> <p>This legislation not only holds perpetrators of offences involving early or forced marriage to account, but also provides tools to help protect Canadians from being forced into a marriage that they don't want.</p> <p>The amendments also make it clear that having been insulted is not a defence for murder.</p>	
<p>5. TARGET AUDIENCES</p> <ul style="list-style-type: none"> • Media and Canadian residents • International community • Law enforcement • Canada borders service agents • Legal community (Lawyers, prosecutors, judges) • Marriage officiates • Educators • Community services/women shelters 	<p>5. PUBLICS-CIBLES</p>
<p>6. COMMUNICATIONS APPROACH AND TACTICS</p> <p>If the coming into force occurs during the pre-election writ period, there will be no announcement but information will be available to the public through the <i>Canada Gazette</i>. Policy officials in federal departments (Justice, CIC, SWC, HC, CBSA, RCMP, PS) will be encouraged to use their networks to inform key stakeholders with a need to know that the provisions are now in force (e.g. law enforcement, legal community, border agents).</p> <p>A higher-profile approach will be taken if the coming into force occurs outside the writ period – e.g. a news release and possibly an event involving the Ministers of CIC and Justice.</p> <p>Ongoing communications (outside the writ period) will include social media (Facebook, Twitter). Federal partners will be encouraged to retweet messages to their followers. Information will be posted on the Government of Canada website.</p>	<p>6. APPROCHE ET STRATÉGIES DES COMMUNICATIONS</p>

7. BUDGET All communications costs will be absorbed into existing budgets.	7. BUDGET S.O. Tous les coûts liés aux communications seront payés à partir des budgets actuels.
8. DEPARTMENTAL COMMUNICATIONS CONTACT Citizenship and Immigration Canada : Andrea Asbil e-mail: Andrea.Asbil@cic.gc.ca Phone: 613-437-7612 Justice Canada : Glenda Stewart e-mail: gstewart@justice.gc.ca Phone : 613-617-8340	8. PERSONNE-RESSOURCE DES COMMUNICATIONS MINISTÉRIELLES

Savard, Angela

From: Stewart, Glenda
Sent: 2015-Jun-15 5:36 PM
To: [REDACTED]
Subject: Revised CP

s.19(1)

CIC made some changes. Here is a revised version.



Communications
Plan--clean-Jun...

Coming into Force of Part 3 of the *Zero Tolerance for Barbaric Cultural Practices Act* (Bill S-7 *Criminal Code* amendments related to early and forced marriages and honour killings)

Communications Plan	Plan de communication
<p>1. COMMUNICATIONS OBJECTIVES</p> <ul style="list-style-type: none"> • To highlight the coming into force of <i>Criminal Code</i> measures related to early and forced marriage and honour killings in Bill S-7. • To send a clear message that gender-based violence, including early and forced marriage and honour killing, will not be tolerated in Canada. 	<p>1. OBJECTIFS DE COMMUNICATION</p>
<p>2. LINKS TO GOVERNMENT MESSAGES AND CAMPAIGNS</p> <p>This legislation supports the Government's commitment to protect Canadians. It also supports the commitment made in the 2013 Speech from the Throne to promote Canadian values by preventing early and forced marriage.</p>	<p>2. LIENS AVEC LES MESSAGES ET LES CAMPAGNES DU GOUVERNEMENT</p>
<p>3. STRATEGIC CONSIDERATIONS</p> <p>The coming into force may occur during a writ period before the federal election, thus limiting the ability to announce and promote it during that period.</p> <p>In ongoing communications about the provisions, it needs to be made clear that even if someone takes a child from Canada to another country to be married, they can still be charged with an offence.</p> <p>To balance the perceived targeting of certain ethnic cultures in Canada, messaging should acknowledge the important contribution that new immigrants from all cultures make in Canada.</p>	<p>3. CONSIDÉRATIONS STRATÉGIQUES</p>
<p>4. KEY MESSAGES</p> <p>No one should be forced to marry.</p> <p>No one should be able to get away with murder because they might have felt insulted by the victim.</p> <p>Canada celebrates its cultural diversity, but certain cultural practices that particularly victimize vulnerable women and girls, including early and forced marriage and so-called "honour" killings, will not be tolerated in this country.</p> <p>This Government is committed to protecting Canadians from violence and has followed through</p>	<p>4. MESSAGES CLÉS</p>

<p>on that commitment by bringing into force <i>Criminal Code</i> amendments in Bill S-7, the <i>Zero Tolerance for Barbaric Cultural Practices Act</i></p> <p>This legislation not only holds perpetrators of offences involving early or forced marriage to account, but also provides tools to help protect Canadians from being forced into a marriage against their will.</p> <p>The amendments also make it clear that having been insulted is not a defence for murder.</p>	
<p>5. TARGET AUDIENCES</p> <ul style="list-style-type: none"> • Media and Canadian residents, particularly ethnic communities • International community • Law enforcement • Canada borders service agents • Legal community (Lawyers, prosecutors, judges) • Marriage officiates • Educators • Community services/women shelters 	<p>5. PUBLICS-CIBLES</p>
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<p>8. DEPARTMENTAL COMMUNICATIONS</p>	<p>8. PERSONNE-RESSOURCE DES</p>

CONTACT

Citizenship and Immigration Canada : Andrea Asbil
e-mail: Andrea.Asbil@cic.gc.ca
Phone: 613-437-7612

Justice Canada : Glenda Stewart
e-mail: gstewart@justice.gc.ca
Phone : 613-617-8340

COMMUNICATIONS MINISTÉRIELLES

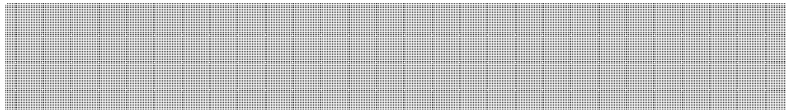
Savard, Angela

From: [REDACTED]
Sent: 2015-Jun-16 3:56 PM
To: Stewart, Glenda s.19(1)
Subject: RE: Revised CP

Find attached.



20150616 -
Communication...



Office of the Minister of Justice and Attorney General of Canada / Cabinet du ministre de la Justice et procureur général du Canada

From: Stewart, Glenda
Sent: Monday, June 15, 2015 5:36 PM
To: [REDACTED]
Subject: Revised CP

CIC made some changes. Here is a revised version.

<< File: Communications Plan--clean-June 15.docx >>

Coming into Force of Part 3 of the *Zero Tolerance for Barbaric Cultural Practices Act* (Bill S-7 *Criminal Code* amendments related to early and forced marriages and honour killings)

Communications Plan	Plan de communication
1. COMMUNICATIONS OBJECTIVES <ul style="list-style-type: none"> To highlight the coming into force of <i>Criminal Code</i> measures related to early and forced marriage and honour killings in Bill S-7. To send a clear message that gender-based violence, including early and forced marriage and honour killing, will not be tolerated in Canada. 	1. OBJECTIFS DE COMMUNICATION
2. LINKS TO GOVERNMENT MESSAGES AND CAMPAIGNS This legislation supports the Government's commitment to protect Canadians. It also supports the commitment made in the 2013 Speech from the Throne to promote Canadian values by preventing early and forced marriage.	2. LIENS AVEC LES MESSAGES ET LES CAMPAGNES DU GOUVERNEMENT
3. STRATEGIC CONSIDERATIONS The coming into force may occur during a writ period before the federal election, thus limiting the ability to announce and promote it during that period. In ongoing communications about the provisions, it needs to be made clear that even if someone takes a child from Canada to another country to be married, they can still be charged with an offence. To balance the perceived targeting of certain ethnic cultures in Canada, messaging should acknowledge the important contribution that new immigrants from all cultures make in Canada.	3. CONSIDÉRATIONS STRATÉGIQUES
4. KEY MESSAGES <u>Canada is a welcoming country that values diversity and individual rights and freedoms.</u> <u>Canada is committed to protecting vulnerable women and girls.</u> <u>Canada celebrates its cultural diversity, but certain cultural practices that particularly victimize vulnerable women and girls, including early and forced marriage and so-called "honour" killings, will not be tolerated in this country.</u>	4. MESSAGES CLÉS

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<p>No one should be forced to marry.</p> <p>No one should be able to get away with murder because they might have felt insulted by the victim.</p> <p>Canada celebrates its cultural diversity, but certain cultural practices that particularly victimize vulnerable women and girls, including early and forced marriage and so-called "honour" killings, will not be tolerated in this country.</p> <p>This Government is committed to protecting Canadians from violence and has followed through on that commitment by bringing into force <i>Criminal Code</i> amendments in Bill S-7, the <i>Zero Tolerance for Barbaric Cultural Practices Act</i></p> <p>This legislation not only holds perpetrators of offences involving early or forced marriage to account, but also provides tools to help protect Canadians from being forced into a marriage against their will. <u>The legislation also contain a new peace bond that gives the court power to prevent a crime and impose conditions on a person where there are reasonable grounds to fear that a forced marriage or a marriage under the age of 16 will otherwise occur</u></p> <p>The amendments also make it clear that having been insulted is not a defence for murder.</p>	
<p>5. TARGET AUDIENCES</p> <ul style="list-style-type: none"> • Media and Canadian residents, particularly ethnic communities • International community • Law enforcement • Canada borders service agents • Legal community (Lawyers, prosecutors, judges) • Marriage officiantes • Educators • Community services/women shelters 	<p>5. PUBLICS-CIBLES</p>
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<p>know that the provisions are now in force (e.g. law enforcement, legal community, border agents).</p> <p>A higher-profile approach will be taken if the coming into force occurs outside the writ period – e.g. a news release and possibly an event involving the Ministers of CIC and Justice <u>with representatives from cultural communities.</u></p> <p>Ongoing communications (outside the writ period) will include social media (Facebook, Twitter). Federal partners will be encouraged to retweet messages to their followers. Information will be posted on the Government of Canada website.</p>	
<p>7. BUDGET All communications costs will be absorbed into existing budgets.</p>	<p>7. BUDGET S.O. Tous les coûts liés aux communications seront payés à partir des budgets actuels.</p>
<p>8. DEPARTMENTAL COMMUNICATIONS CONTACT Citizenship and Immigration Canada : Andrea Asbil e-mail: Andrea.Asbil@cic.gc.ca Phone: 613-437-7612</p> <p>Justice Canada : Glenda Stewart e-mail: gstewart@justice.gc.ca Phone : 613-617-8340</p>	<p>8. PERSONNE-RESSOURCE DES COMMUNICATIONS MINISTÉRIELLES</p>

Savard, Angela

From: [REDACTED]
Sent: 2015-Jun-17 11:20 AM
To: Stewart, Glenda
Cc: Van Loon, Christina
Subject: RE: Revised CP

s.19(1)

Glenda,

Sorry for delay and thank you for your patience.

Approved quote below:

"Our Government is committed to ensuring that women and girls have the freedom to make the choices they want to make concerning their destiny. No one should be forced to marry against their wishes. And, no one should be able to get away with murder because they felt that the victim had insulted their family. In Canada, we value cultural diversity, but we are sending a strong signal that certain cultural practices that victimize vulnerable women and girls, including forced marriages and so-called "honour" killings, will not be tolerated in this country. I am pleased that our legislation is standing up for victims and gives us more tools to address these serious crimes, to provide women and girls a more secure future."

Thank you,

[REDACTED]

Office of the Minister of Justice and Attorney General of Canada / Cabinet du ministre de la Justice et procureur général du Canada

From: Stewart, Glenda
Sent: Tuesday, June 16, 2015 4:01 PM
To: [REDACTED]
Cc: Van Loon, Christina
Subject: RE: Revised CP

Thanks [REDACTED] How about that quote I sent you for the news release?

Glenda Stewart
Senior Communications Advisor / Conseillère principale en communications
Strategic Communications / Communications stratégiques
Communications Branch | Direction des Communications
Department of Justice / Ministère de la Justice
Ottawa, Canada K1A 0H8
Glenda.Stewart@justice.gc.ca
Telephone / Téléphone: 613-617-8340
Government of Canada / Gouvernement du Canada

From: [REDACTED]
Sent: June-16-15 3:56 PM

To: Stewart, Glenda
Subject: RE: Revised CP

Find attached.

s.19(1)

<< File: 20150616 - Communications Plan--clean (REVISED - POLICY).docx >>

Office of the Minister of Justice and Attorney General of Canada / Cabinet du ministre de la Justice et procureur général du Canada

From: Stewart, Glenda
Sent: Monday, June 15, 2015 5:36 PM
To: [REDACTED]
Subject: Revised CP

CIC made some changes. Here is a revised version.

<< File: Communications Plan--clean-June 15.docx >>

To: [REDACTED]
Sent: Thur 6-18-2015 1:43:33 PM
From: Ministerial Correspondence Unit - Mailout
Flag Status: 0x00000000
Subject: Correspondence from the Minister of Justice and Attorney General of Canada

s.19(1)

Dear [REDACTED]

Thank you for your correspondence of April 21 and 30, 2015, concerning the defence of provocation.

As you may know, the provocation defence can only be applied to a murder charge. Where a provocation defence is successful, however, the result is a conviction for manslaughter, not an outright acquittal. For the defence to be successful, in accordance with section 232(2) of the *Criminal Code*, the provocation must be in the form of a "wrongful act or insult" that would "deprive an ordinary person of the power of self-control," and the accused must have "acted on it on the sudden and before there was time for his passion to cool." The "ordinary person" requirement is meant to ensure that the accused person's response is measured against the societal standards of control and tolerance, and not against the accused person's own code of ethics. Ordinary people are presumed to have a reasonable degree of self-control and to be able to withstand resorting to violence except in exceptional circumstances.

It may interest you to know that Bill S-7, the *Zero Tolerance for Barbaric Cultural Practices Act*, was tabled in the Senate on November 5, 2014, and is now before the House of Commons. The Bill proposes to amend the *Immigration and Refugee Protection Act*, the *Civil Marriage Act*, and the *Criminal Code* to provide more protection and support for vulnerable immigrants—primarily women and girls.

Among other measures, Bill S-7 would amend the defence of provocation so that lawful conduct by the victim that might be perceived by the accused as an insult, or offend that person or their sense of family "honour" or reputation, cannot be used to reduce murder to manslaughter. Only conduct by the victim that amounts to a relatively serious criminal offence (i.e. an offence under the *Criminal Code* punishable by at least five years in prison) could be argued to be "provocation" for the purposes of the defence.

I note your particular interest in how the provocation defence is applied in Ontario courts. It may be helpful for you to know that, while the Parliament of Canada is responsible for enacting criminal law, the administration of justice is the responsibility of the provincial governments. Therefore, if you have not already done so, you may wish to write to the Honourable Madeleine Meilleur, Attorney General of Ontario, who is responsible for the administration of justice in that province. Minister Meilleur can be reached at attorneygeneral@ontario.ca.

Thank you again for writing.

Yours truly,

The Honourable Peter MacKay

7

Savard, Angela

From: McLeod, Ian W (COMMS)
Sent: 2015-Jun-18 5:12 PM
To: [REDACTED]
Cc: Gowing, Andrew
Subject: RE: Media call to Prairie Region: S-7

s.19(1)

Thanks very much.

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

From: [REDACTED]
Sent: June-18-15 5:07 PM
To: McLeod, Ian W (COMMS); [REDACTED]
Cc: Gowing, Andrew
Subject: RE: Media call to Prairie Region: S-7

See below:

Forced marriage is generally defined as a marriage in which one or both people do not give their free and enlightened consent to the marriage. A forced marriage is distinct from an arranged marriage where both parties freely consent to the marriage.

Once the *Criminal Code* amendments contained in Bill S-7 come into force, knowingly and actively helping a forced marriage ceremony to happen will be a distinct criminal offence in Canada. Bill S-7 also contains measures to prevent forced marriages from taking place, including the specific forced marriage peace bond and the prohibition on removing a child from Canada for the purposes of a forced marriage.

Changes to the *Civil Marriage Act*, including the new national absolute minimum age for marriage, came into force on Royal Assent. This new minimum age for marriage now applies to all persons ordinarily resident in Canada, regardless of where in the world their marriage is to take place.

From: McLeod, Ian W (COMMS)
Sent: Wednesday, June 17, 2015 6:52 PM
To: [REDACTED]
Cc: Gowing, Andrew
Subject: Fw: Media call to Prairie Region: S-7

Sorry, this one slipped my mind. Please let me know about changes, and I'll forward to PRO for response.

From: McLeod, Ian W (COMMS)
Sent: Wednesday, June 17, 2015 12:50 PM
To: [REDACTED]
Cc: Gowing, Andrew
Subject: RE: Media call to Prairie Region: S-7

s.19(1)

Here, for review, are the updated media lines (as approved by FCY and CLPS). Please let me know about changes or concerns.

Media Outlet: [REDACTED] Calgary ([REDACTED])

Questions:

Working on a documentary about Bill S – 7, the *Zero Tolerance for Cultural Barbaric Practices Act*. She wants a comment from Justice Canada affirming that Canada recognizes there is a difference between a forced marriage where there is one party not consenting in a marriage, and an arranged marriage, which is not included in the Act.

Proposed response:

Forced marriage is generally defined as a marriage in which one or both people do not give their free and enlightened consent to the marriage. A forced marriage is distinct from an arranged marriage where both parties freely consent to the marriage.

Once the *Criminal Code* amendments contained in Bill S-7 come into force, knowingly and actively helping a forced marriage ceremony to happen will be a distinct criminal offence in Canada. Bill S-7 also contains measures to prevent forced marriages from taking place, including the specific forced marriage peace bond and the prohibition on removing a child from Canada for the purposes of a forced marriage.

Changes to the *Civil Marriage Act*, including the new national absolute minimum age for marriage, came into force on Royal Assent. This new minimum age for marriage now applies to all persons ordinarily resident in Canada, regardless of where in the world their marriage is to take place.

If asked what remedies are in place for couples in Canada who have been forced to marry?

Under Canadian law, a marriage requires the free and enlightened consent of both spouses to be legally valid. However, it will remain valid until it is ended by a court order. Anyone who has been subjected to a forced marriage is encouraged to seek legal advice on the options available to them under the law of their province or territory of residence. A Canadian civil or family court could provide relief whether the marriage took place in Canada or abroad.

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Department of Justice Canada | Ministère de la Justice du Canada

From: McLeod, Ian W (COMMS)
Sent: June-16-15 5:08 PM
To: [REDACTED]

Cc: Gowing, Andrew

Subject: Media call to Prairie Region: S-7

Good afternoon,

We're working on getting an update to media lines on S-7 to respond to this question today. We can forward the response to Prairie Regional Office, but please let me know if you have any questions or concerns.

Thanks,

Ian

Ian McLeod
Senior Advisor, Media Relations | Conseiller principal, relations avec les médias
Strategic Communications | Communications stratégiques

Communications Branch | Direction des communications
Department of Justice Canada | Ministère de la Justice du Canada
iwmcleod@justice.gc.ca
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Proposed Legislative Forward Agenda
January to June 2015

List of Initiatives currently before Parliament

Initiative	Title	Status	Can remain on Order Paper Y/N
C-13	Protecting Canadians from Online Crime Act (Cyberbullying)	Adopted at Third reading by the House of Commons on October 20 Currently before the Senate Legal Committee	
C-26	Tougher Penalties for Child Predators Act (Child Sexual Offences)	Currently before the House of Commons at Second Reading Debate	
C-32	An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts (Victim Bill of Rights Act)	Currently before the Justice Committee of the House of Commons	
C-35	An Act to amend the Criminal Code (law enforcement animals, military animals and service animals) (Quanto's Law)	Currently before the House of Commons at Second Reading	
C-43	A Second Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures	Currently before the Finance Committee in the House of Commons and being pre-studied in the Senate	
S-2	An Act to amend the Statutory Instruments Act and to make consequential amendments to the Statutory Instruments Regulations	Adopted by the Senate Apr 9, 2014 Referred to the Justice Committee of the House of Commons on Oct 24	
S-7	An Act to amend the Immigration and Refugee Protection Act, the Civil Marriage Act and the Criminal Code and to make consequential amendments to other Acts (CIC Lead)	Currently at Second Reading Debate in the Senate	

	(Zero Tolerance for Barbaric Cultural Practices Act)		
Proposal	Miscellaneous Statutes Law Amendment Act (MSLA)	Currently being studied in both Houses by the Justice Committee and the Senate Legal Committee	

Van Loon, Christina

From: Van Loon, Christina
Sent: 2015-Jul-10 1:58 PM
To: [REDACTED]
Cc: Chapman, Jeffrey; Buffam, Jennifer; Bolton, Kathy
Subject: RE: CIF dates s.19(1)
Categories: Minister's Office

Yes, they have been! I have a message in to our contact at CIC to see what they might like to do.

Thanks, and sorry to disturb you!
Christina

From: [REDACTED]
Sent: 2015-Jul-10 1:45 PM
To: Van Loon, Christina; [REDACTED]
Cc: Chapman, Jeffrey; Buffam, Jennifer; Bolton, Kathy
Subject: Re: CIF dates

I'm not opposed to get a quote in or something like that. They've been pretty hands on with this one.

Envoyé de mon smartphone BlackBerry 10 sur le réseau Rogers.

De: Van Loon, Christina
Envoyé: vendredi 10 juillet 2015 1:21 PM
À: [REDACTED]
Cc: Chapman, Jeffrey; Buffam, Jennifer; Bolton, Kathy
Objet: RE: CIF dates

Thanks, [REDACTED] If by any chance CIC did not want to do something, would you want us to post something ourselves?

From: [REDACTED]
Sent: 2015-Jul-10 1:21 PM
To: Van Loon, Christina; [REDACTED]
Cc: Chapman, Jeffrey; Buffam, Jennifer; Bolton, Kathy
Subject: Re: CIF dates

Thanks Christina.
Let us know. We could put some back-grounders up - that might cover off.
For S-7, if CIC wants to post something, we could link up to their site / release whatever they do.

Envoyé de mon smartphone BlackBerry 10 sur le réseau Rogers.

De: Van Loon, Christina
Envoyé: vendredi 10 juillet 2015 12:59 PM
À: [REDACTED]
Cc: Chapman, Jeffrey; Buffam, Jennifer; Bolton, Kathy
Objet: CIF dates

Hello [REDACTED] and [REDACTED]

s.19(1)

We have been told that the CIF for C-26 and S-7 cannot be July 15 since the meeting will be held that day. As a result, the CIF date should be July 16 instead. That said, there are some wrinkles. Normally, the CIF would be published in Canada Gazette. However, since the next publication of that is on July 29, TBS has suggested that we post the fact that the bills (or parts thereof) have come into force somewhere on our web site. I know you had already planned to include mention of C-26 in the Boost news release. I have asked Parliamentary Affairs to try to confirm if that is sufficient or if something more or different would be needed. If you happen to know, we would be grateful to hear.

For S-7, I know that CIC has been leading on most of the communications. Would you prefer to have a notification or release posted on our site, or to have CIC do something? If the latter, we can check in with their communications group. You may want to check in with your counterparts as well.

We will also check to see if the communications plans need to be updated to reflect these changes.

Thank you,
Christina